Supreme Court, U.S.
FILED
DEC 26 2001
CLERK

No. 01-773

In The

Supreme Court of the United States

JOHN N. BACH, J.D. RITCHIE and ELAINE RITCHIE,

Petitioners,

vs.

UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, JAMES MASON, CINDY MASON, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

GARY L. COOPER
Counsel of Record
COOPER & LARSEN
151 North Third Avenue
Suite 210
P. O. Box 4229
Pocatello, Idaho 83205-4229
(208) 235-1145
Attorney for Respondent
Jared M. Harris

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED FOR REVIEW

1. DID THE UNITED STATES DISTRICT COURT ABUSE ITS DISCRETION BY DISMISSING PETITIONERS' AMENDED COMPLAINT WITH PREJUDICE FOR FAILURE TO COMPLY WITH F.R.C.P. 8?

2. DID THE UNITED STATES DISTRICT COURT ERR IN FINDING AS AN ADDITIONAL BASIS OF DISMISSAL WITH PREJUDICE THAT PETITIONERS' AMENDED COMPLAINT DID NOT MEET THE REQUIREMENTS OF F.R.C.P. 12(b)(6)?

TABLE OF CONTENTS

Page

Table of Contents ii

Table of Authorities iii

Statement of the Case 1

Summary of the Argument 8

Argument 10

I. RULE 10 CONSIDERATIONS 10

II. FAILURE TO MEET F.R.C.P 8 REQUIREMENTS 11

III. PETITIONERS' COMPLAINT FAILS TO STATE CLAIMS UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO F.R.C.P. 12(b)(6) 12

A. Alleged RICO Violations 12

B. Illegal Tax Levy Returns 15

C. Failure to Release Tax Levy Allegations ... 16

D. Failure to Release Lien Allegations 16

E. Failure to Provide a Tax Refund Allegations 17

F. Deprivation of Constitutional Rights Allegations 18

Conclusion 21

TABLE OF AUTHORITIES

Page

CASES

Arsenaux v. Roberts, 726 F.2d 1022 (5th Cir. 1982) 19

Baumer v. Pachl, 8 F.3d 1341 (9th Cir. 1993)..... 13

Bowles v. Pro Indiviso, Inc., 132 Idaho 371, 973 P.2d 142 (1999)..... 2, 7, 19

Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980) 19

H.J., Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989)..... 14

Hale v. Harney, 786 F.2d 688 (5th Cir. 1986)..... 19

Ivey v. Board of Regents, 673 F.2d 266 (9th Cir. 1982) 20

Margolis v. Ryan, 140 F.3d 850 (9th Cir. 1998)..... 18

McCarthy v. Mayo, 827 F.2d 1310 (9th Cir. 1987) 16

North Star International v. Arizona Corporation Commission, 720 F.2d 578 (9th Cir. 1983)..... 16

Polk County v. Dodson, 454 U.S. 312, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981)..... 20

Pro Indiviso, Inc. v. Mid-Mile Holding Trust, 131 Idaho 741, 963 P.2d 1178 (1998).....2, 5

Religious Technology Center v. Wollersheim, 971 F.2d 364 (9th Cir. 1992)..... 14

Reves v. Ernst & Young, 507 U.S. 170, 113 S. Ct. 1163, 122 L. Ed. 2d 525 (1993)..... 13

TABLE OF AUTHORITIES – Continued

Page

Silverton v. Department of Treasury, 644 F.2d 1341 (9th Cir. 1981) 12

United States v. Brooklier, 685 F.2d 1208 (9th Cir. 1982), *cert denied*, 459 U.S. 1206, 1035 S. Ct. 1194, 75 L. Ed. 2d 439 (1983) 14

University of Maryland at Baltimore, et al. v. Peat, Marwick, Main & Co., 996 F.2d 1534 (3rd Cir. 1993) 14

RULES

Federal Rules of Civil Procedure 8 ..... 1, 8, 11

Federal Rules of Civil Procedure 12(b)(6) 7, 9, 12, 13, 15, 17

Federal Rules of Civil Procedure 56 7

United States Supreme Court Rule 10 ..... 8, 10

United States Code Chapter 18, §§ 1961-1962 ..... 13, 14

United States Code Chapter 26, § 6325 17

United States Code Chapter 26, § 6331 ..... 9, 15

United States Code Chapter 26, § 6343 ..... 9, 15

United States Code Chapter 26, § 6343(a) 9, 16

United States Code Chapter 26, § 6402 17

United States Code Chapter 26, § 7432 16

United States Code Chapter 26, § 7433 ..... 9, 16, 17

United States Code Chapter 26, § 7426 ..... 9, 15

United States Code Chapter 28, § 2410 ..... 9, 17

TABLE OF AUTHORITIES – Continued

Page

United States Code Chapter 42, § 1983.... 9, 18, 19, 20
United States Code Chapter 42, § 1985(2) 18
United States Code Chapter 42, § 1985(3) 18
United States Code Chapter 42, § 1986..... 18
United States Code Chapter 42, § 1988..... 18

STATEMENT OF THE CASE

NATURE OF THE CASE

This action began on September 30, 1998, when a dozen or more plaintiffs (petitioners) in various capacities sued 113 defendants alleging conspiracy and deprivation of their constitutional rights. Those named as defendant included government agencies who had been previously involved in cases in which the petitioners were parties. On June 1, 1999, the United States District Court entered an Order Dismissing Complaint with Leave to Amend, dismissing petitioners' complaint, without prejudice, for failure to comply with F.R.C.P. 8. Among other things, the District Court found that the complaint lacked specificity. In the Order, the District Court set forth some basic pleading requirements for an amended complaint, including: 1) specifying which defendants were liable for which claims; 2) separating their claims so that only one claim was pled under each heading; 3) pleading only facts which are relevant to their claims; 4) identifying which facts support which claims; and 5) making adjustments to the original complaint in light of the arguments raised in some of the defendants' motions to dismiss. (App. 12). The District Court granted petitioners thirty days leave to amend their original complaint and warned that failure to amend the complaint in compliance with Rule 8 may result in dismissal with prejudice.

COURSE OF PROCEEDINGS BELOW

On June 21, 1999, the District Court granted petitioners, at their request, a thirty day extension of time in

which to file their amended complaint. Petitioners filed their amended complaint on August 2, 1999. Respondent Jared Harris filed his Answer to Amended Complaint and Demand for Jury Trial and Motion to Dismiss and/or Motion for Summary Judgment on August 13, 1999. (App. 1). On October 21, 1999, following the filing of motions to dismiss by various respondents, the District Court entered its Order of Dismissal, dismissing petitioners' amended complaint with prejudice as to all defendants/respondents. (App. 17). The petition for certiorari to this Court follows the Ninth Circuit's affirmation of the United States District Court decision by Judge Edward J. Garcia. (App. 42).

The claims in question had their genesis in State Court. The salient facts are actually set forth in two reported decisions of the Idaho Supreme Court, namely *Pro Indiviso, Inc. v. Mid-Mile Holding Trust*, 131 Idaho 741, 963 P.2d 1178 (1998), App. 43, and *Bowles v. Pro Indiviso, Inc.*, 132 Idaho 371, 973 P.2d 142 (1999), App. 55. Respondent Jared Harris acted as defense counsel at the trial court level (not on appeal) in the *Bowles* case and his involvement was limited to approximately nine (9) months. Jared Harris is not, as alleged in the Amended Complaint filed in this matter, an owner or principal in Pro Indiviso, Inc. or Scona, Inc.

Dean and Betty Bowles owed money to the United States for failure to pay income taxes. In July 1993, Dean and Betty filed a deed in which they conveyed title to their real property to Mid-Mile Holding Trust (Mid-Mile). On March 1, 1994, the Internal Revenue Service (I.R.S.) filed a lien on the property for unpaid taxes. The lien named Mid-Mile as nominee of Dean and Betty Bowles. A

tax sale was held in June 1995, at which Pro Indiviso purchased the property for $32,100. The I.R.S. issued Pro Indiviso a certificate of sale. After the period of redemption had expired, Pro Indiviso received a deed from the I.R.S. which it recorded on December 14, 1995.

On March 12, 1996, Pro Indiviso filed a verified complaint in State Court (7th Judicial District in and for the County of Bonneville) against Mid-Mile as nominee of Dean and Betty Bowles seeking ejectment, a writ of assistance and damages. Mid-Mile was never served, but Dean and Betty Bowles were served and Betty Bowles entered a general appearance by filing a "Motion to Dismiss Due to Fraud of Internal Revenue Service, etc." On April 5, 1996, Pro Indiviso filed a motion for a writ of assistance and scheduled a hearing on all pending motions.

A hearing was held on May 13, 1996. The district court treated Pro Indiviso's motion for a writ of assistance as a motion for partial summary judgment. The court granted the motion holding that Pro Indiviso had submitted a verified complaint that it held a recorded deed to the property, and that Dean and Betty Bowles had produced no admissible evidence or affidavits to dispute this fact.

Following the hearing, Dean and Betty Bowles filed a "Judicial Notice of Objection to Hearing, etc.," along with other motions. The court denied the motions because they simply restated the previous "Motion to Dismiss Due to Fraud of Internal Revenue Service, etc." and contained no affidavits or admissible evidence. Not to be dissuaded, Dean and Betty Bowles continued to file motions including a renewed motion to dismiss due to I.R.S. fraud. A

hearing was held on the motions which was attended by Dean and Betty Bowles and counsel for Pro Indiviso. In a memorandum decision and order, the court denied the Bowles' motions including a motion to dismiss for lack of subject matter jurisdiction because the trial court reasoned that Idaho courts did have jurisdiction to determine right of possession and to issue a writ of assistance.

Finally, the trial court denied the renewed motion to dismiss based on fraud. The court ruled that none of the cases cited applied to these facts and that if Dean and Betty Bowles wanted to attack the lien and sale they would have to do so through an administrative hearing or by filing suit against the I.R.S. in federal district court.

On August 7, 1996, Dean and Betty Bowles filed a notice of appeal to the Idaho Supreme Court which was dismissed because there was no final judgment in the action. On September 6, 1996, Dean and Betty filed an answer to the original complaint filed in March. On January 13, 1997, a final pre-trial conference was held and because no representative of Pro-Indiviso attended the conference, the trial court dismissed, without prejudice, all of Pro Indiviso's remaining claims. Another hearing was held on January 28, 1997 to hear other motions filed by the Bowles. On February 10, the trial court issued a memorandum decision and order in which it granted the motion to vacate the trial date and denied all of the other motions because, following the dismissal of Pro Indiviso's remaining claims, there were no claims pending before the court.

Another notice of appeal was filed on March 24, 1997 which was conditionally dismissed due to lack of a final judgment. The district court then issued a final judgment

on July 22, 1997 and the Idaho Supreme Court reinstated the appeal. On appeal, Dean and Betty Bowles claimed that the district court erred in granting partial summary judgment in favor of Pro Indiviso on its motion for a writ of assistance because (1) Pro Indiviso did not specifically identify in its complaint a statutory basis for bringing its action, (2) the I.R.S. did not follow its own regulations in conducting the sale, and (3) the district court failed to look behind the deed obtained by Pro Indiviso to determine its validity. Dean and Betty Bowles also argued that Pro Indiviso did not have standing to bring an action for ejectment because it had not previously quieted title in the property.

On August 28, 1998, the Idaho Supreme Court affirmed the district court's grant of the writ of assistance and awarded costs and fees on appeal to Pro-Indiviso, Inc. because it determined that Dean and Betty Bowles had raised the same issues and arguments which were raised before the district court, that most of their motions were incomprehensible and lacked any basis in law and that the repeated filing of these motions, and the arguments in support on appeal, were found to be frivolous and unreasonable. *Pro Indiviso, Inc. v. Mid-Mile Holding Trust*, 131 Idaho 741, 963 P.2d 1178 (1998), App. 43.

In January 1997, at about the same time the litigation before the trial court was ending in the Pro-Indiviso lawsuit, Mid-Mile, Eileen Hancock, as trustee for Mid-Mile, and the Bowles filed their own complaint in which they sought to quiet title to the subject property. In June 1997, pursuant to court order, the Bowles filed an amended complaint against Pro Indiviso, Kent E. Carlson, Carolee Carlson, Alva Harris and Evelyn Harris.

Jared Harris, an Idaho attorney, was hired to represent the Carlson and the Harris defendants. In this lawsuit, the Bowles alleged that in July of 1993, by deed recorded in Bonneville County, Mid-Mile Holding Trust became the owner of the subject property in fee simple. However, despite an order of the district court requiring that a copy of the trust agreement be filed with the district court within ten days, the Bowles failed to present any admissible evidence to the district court that supported the existence of Mid-Mile Holding Trust as a lawfully created trust in Idaho. The defendants properly filed answers to the Bowles' complaints. The amended complaint stated two causes of action: quiet title, and deprivation of due process of law.

On July 2, 1997, defendant Pro Indiviso filed a motion for summary judgment and sanctions. On July 7, 1997, the other defendants represented by Jared Harris filed a motion for judgment on the pleadings. After hearing argument on the pending motions, the district court granted the motion for judgment on the pleadings as to all defendants. In its corresponding Memorandum Decision and Order, dated August 14, 1997, the district court awarded attorney fees against the Bowles in the amount of $450.00. Additionally, the court awarded $1,800.00 in attorney fees against Mid-Mile Holding Trust, and trustees Mark Miller and Eileen Hancock. Costs were also awarded against all plaintiffs. On August 29, 1997, the individual defendants filed a motion for additional attorney fees and costs. At the September 15, 1997 hearing on the pending motions, the Bowles submitted a "verified judicial notice" objecting to the payment of all attorney fees. The district court issued another Memorandum

Decision and Order on September 30, 1997, in which it awarded additional attorney fees against the Bowles in the amount of $1,392.00.

The Bowles then appealed to the Idaho Supreme Court. Alva Harris took over representation of all the defendants on appeal. On appeal, the Idaho Supreme Court affirmed the trial court and affirmed the order of the district court granting judgment on the pleadings and the order of the district court awarding costs, fees, and sanctions against the Bowles. *Bowles v. Pro Indiviso, Inc.*, 132 Idaho 371, 973 P.2d 142 (1999). (App. 55).

In October of 1998, the Bowles and others filed this action in the United States District Court for the District of Idaho naming 113 defendants. Jared Harris was one of those defendants. On June 1, 1999, the United States District Court for the District of Idaho entered an order *sua sponte* dismissing the plaintiffs' original complaint because of its lack of specificity, i.e. there was no attempt to "match up the specific factual allegations and the specific legal claim to specific defendants." (Order Dismissing Complaint With Leave to Amend, App. 12). After the District Court entered an Order on June 1, 1999 dismissing the complaint with leave to amend, some, but not all, the original plaintiffs filed an Amended Complaint naming the same 113 original defendants, including Jared Harris. Jared Harris maintained that, as to him, the Amended Complaint was equally deficient and brought a motion to dismiss pursuant to F.R.C.P. 12(b)(6) and/or, in the alternative, for summary judgment pursuant to F.R.C.P. 56. This was granted by the United States District Court for the District of Idaho in the Order of Dismissal

dated October 21, 1999. (App. 17). That decision was affirmed by the United States Court of Appeals for the Ninth Circuit in a Memorandum decision filed February 21, 2001. (App. 39). It is from that decision and the subsequent denial of their petition for rehearing before the Ninth Circuit Court of Appeals that the plaintiffs petition this Court for certiorari.

SUMMARY OF THE ARGUMENT

Plaintiffs' petition does not meet the requirements of United States Supreme Court Rule 10 because it presents no decision in conflict with another United States court of appeals on the same important matter, no important federal question that conflicts with a state court of last resort, no departure from the accepted and usual course of judicial proceedings, nor is it an important question of federal law that should be settled by this Court.

The Ninth Circuit correctly affirmed the ruling of the United States District Court that the District Court properly exercised its discretion in dismissing petitioners' amended complaint with prejudice for failure to comply with Rule 8 of the Federal Rules of Civil Procedure. Rule 8 requires the contents of pleadings to be simple, concise and direct. Petitioners' original complaint contained primarily conclusory statements which were unsupported by appropriate factual allegations. After dismissing the original complaint with instructions concerning the requirements of Rule 8 and warning of a possible dismissal with prejudice of any subsequent complaint that did not comply, the District Court granted petitioners

leave to file an amended complaint. The amended complaint was no better than the first. Because the District Court reasonably explored possible and meaningful alternatives to dismissal prior to entering its final order dismissing the complaint with prejudice, it did not abuse its discretion and the Ninth Circuit Court of Appeals properly affirmed the District Court.

In addition to the plaintiffs' non-compliance with Rule 8, defendant Jared Harris (along with defendant Richard Ward) also filed motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure of plaintiffs' complaint to state claims upon which relief can be granted. The analysis under 12(b)(6) involves the sufficiency of the claims of violations of RICO and United States Code Chapter 26, §§ 6331, 6343, 6343(a), 7426, and 7433; Chapter 28, § 2410; and Chapter 42, § 1983. In no instance are the allegations set forth in a sufficient manner to provide a basis for which relief might be granted against all defendants and certainly no connections shown between the vague, generalized allegations and the defendant Jared Harris, an attorney whose involvement in the matters was minimal and could not possibly be construed as in violation of certain tax or civil rights provisions. The District Court granted the 12(b)(6) motion to dismiss and this was also upheld by the Ninth Circuit Court of Appeals.

ARGUMENT

1. RULE 10 CONSIDERATIONS

Rule 10 of the Rules of the Supreme Court of the United States embellishes reasons that may convince the Court to exercise its discretion by granting a writ of certiorari, as follows:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

In the case involving Bach, et al., none of these considerations apply for granting certiorari. This Court's supervisory power need not be used because the lower court's ruling does not conflict with any United States court of appeals nor with any ruling by a state court of last resort. The lower court decision involves no important federal question and involves no departure from the

accepted and usual course of judicial. On the contrary, the lower court's actions were warranted on procedural grounds and displayed an efficacious use of judicial resources by reducing the amount of time and expense needed to resolve claims such as those brought forth by these petitioners and yet still remaining fair and just to these *pro se* claimants.

Finally, the lower court's decision does not present a federal question that has not, but should be, settled by this Court. Petitioners' claims failed on procedural grounds due to their unwillingness to comply with minimal threshold pleading requirements.

II. FAILURE TO MEET F.R.C.P. 8 REQUIREMENTS

Judge Edward J. Garcia, for the United States District Court for the District of Idaho, twice ruled that the petitioners had not met threshold requirements for a proper complaint under the Federal Rules of Civil Procedure. His first Order Dismissing Complaint with Leave to Amend (App. 12) dated May 27, 1999, allowed the plaintiffs thirty days to file an amended complaint that might comply with Rule 8(a) of the F.R.C.P., the requirement that a complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief" and Rule 8(e) that requires averments of a pleading to be "simple, concise and direct."

Judge Garcia reviewed the amended complaint and found that cosmetic changes had been made but it still did not comply with his previous Order or Rule 8 guidelines. In his Order of Dismissal (App. 17) dated October 21, 1999, he explained: " . . . the amended complaint is as

confusing, verbose, and unintelligible as the original complaint. In addition, it still lacks the required specificity." He goes on to explain that the general tenor of the petitioners' claims appears to be the seizure of property but in no instance is there a showing of specific property seized by a particular defendant on certain dates. Therefore, there is no fair notice to the respondents by which they might defend such claims. The lack of certain dates prevents any court from determining if the claims are time-barred. The *sua sponte* ruling of dismissal with prejudice as to all defendants/respondents was proper under the circumstances as the 9th Circuit court did in *Silverton v. Department of Treasury,* 644 F.2d 1341, 1345 (9th Cir. 1981).

III. PETITIONERS' COMPLAINT FAILS TO STATE CLAIMS UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO F.R.C.P. 12(b)(6)

A. Alleged RICO Violations

In paragraph 15 of their Amended Complaint, petitioners allege that two local attorneys, Jared Harris being one, through "sham and alter ego entities" Pro Indiviso, Inc. and Scona, Inc. conspired with Idaho district court judges, U.S. and IRS officials/representatives and various agencies of the State of Idaho to purchase real and personal property belonging to the plaintiffs and their spendthrift trusts. In response, Jared Harris filed an Affidavit (App. 4) and Supplemental Affidavit (App. 8) that establishes that the allegations are without foundation, i.e., that Jared Harris is not an owner, employee, director or shareholder of Pro Indiviso, Inc. or Scona, Inc., nor has

he ever represented them as an attorney. Jared Harris has never, in an individual or representative capacity, purchased an interest in the personal or real property of any of the petitioners named in the Amended Complaint (or their so-called family spendthrift trusts), nor has any entity in which he has an ownership interest done so.

Based on these allegations, petitioners allege that Jared Harris violated 18 U.S.C. §§ 1961 et seq., the Racketeer Influenced Corrupt Organizations (RICO) provisions of the Organized Crime Control Act of 1970. In *Baumer v. Pachl*, 8 F.3d 1341, 1344 (9th Cir. 1993) the Ninth Circuit discussed the allegations which are necessary for a Complaint to survive a 12(b)(6) motion directed to RICO allegations against a lawyer following the United States Supreme Court decision in *Reves v. Ernst & Young*, 507 U.S. 170, 113 S.Ct. 1163, 122 L. Ed. 2d 525 (1993):

> . . . Pachl's involvement, the preparation of two letters in September, 1982, the preparation of a partnership agreement in 1982, and assistance in a March, 1987 Chapter 7 proceeding, in which he again sent two letters, does not suffice to impute liability under *Reves*. The allegedly fraudulent scheme began in 1976 and continued until 1987; Pachl's involvement did not begin until 1982 and his role thereafter was at best sporadic. Pachl at no time held any formal position in the limited partnership. Nor did he play any part in directing the affairs of the enterprise. Pachl's role was limited to providing legal services to the limited partnership and EPA. Whether Pachl rendered his services well or poorly or improperly, is irrelevant to the *Reves* test. We are therefore compelled to conclude

that under the *Reves* "operation and management" test the complaint fails to allege a § 1962(c) cause of action as to Pachl.

Providing services that ultimately benefit the "enterprise" does not mean that one becomes liable under RICO as a result. There must be a nexus alleged between the person and the operations and management of the affairs of the alleged enterprise. *University of Maryland at Baltimore, et al. v. Peat, Marwick, Main & Co.*, 996 F.2d 1534, 1539 (3rd Cir. 1993). There must be allegations sufficient to establish (or at least infer) that the individual, by his words or actions, objectively manifested an agreement to participate, directly or indirectly, in the affairs of the alleged enterprise, through the commission of two or more predicate crimes. *United States v. Brooklier*, 685 F.2d 1208, 1222 (9th Cir. 1982), *cert. denied*, 459 U.S. 1206, 1035 S. Ct. 1194, 75 L. Ed. 2d 439 (1983). To establish a "pattern of racketeering activity," plaintiff's allegations must show both that "the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989). Both the "relatedness" requirement and the "continuity" requirement must be established by the pleadings. *Religious Technology Center v. Wollersheim*, 971 F.2d 364 (9th Cir. 1992).

Petitioners' Amended Complaint failed to allege facts that would show that Jared Harris was involved in the operations and management of the alleged enterprise; failed to allege facts that would show that Jared Harris agreed to participate in the affairs of the alleged enterprise through the commission of two or more predicate crimes; and failed to allege facts that would show the

existence of two or more predicate crimes that were related and pose a threat of continued criminal activity. As such, the RICO claim of the Amended Complaint was deficient. Respondent Jared Harris' role was limited to providing legal services in one isolated lawsuit for a limited period of time. There were no facts that met the "operations and management" test necessary to make out a RICO claim. Therefore, Judge Garcia's finding that plaintiffs' RICO claim should be dismissed for failure to state a claim upon which relief can be granted was proper.

B. Illegal Tax Levy Returns

26 U.S.C. § 6331 authorizes the federal government to levy upon, distrain and seize the property or property interests of taxpayers who neglect or refuse to pay taxes. 26 U.S.C. § 6343 provides the bases for releasing property which has been levied upon. 26 U.S.C. § 7426 provides that a third party (i.e., anyone "other than the person against whom is assessed the tax out of which such levy arose") may file a civil action against the United States in federal court as the remedy for a wrongful levy. Petitioners alleged that Jared Harris, among others, violated these sections. No material facts were alleged to support plaintiffs' claim or to explain how Jared Harris, a non-governmental employee, could have violated these provisions of federal law relating to certain powers of the Internal Revenue Service and identifying the method of redress for a wrongful levy by third parties.

Conclusory allegations with nothing more are insufficient to defeat an F.R.C.P. 12(b)(6) motion to dismiss for

failure to state a claim. *McCarthy v. Mayo*, 827 F.2d 1310 (9th Cir. 1987); *North Star International v. Arizona Corporation Commission*, 720 F.2d 578 (9th Cir. 1983) (complaint which is vague, conclusory, and general and does not set forth any material facts in support of the allegations was properly dismissed).

C. Failure to Release Tax Levy Allegations

26 U.S.C. § 7433 spells out the "exclusive remedy" for taxpayers damaged by the reckless or intentional disregard of any provision of Title 26 or any regulation promulgated thereunder by any officer or employee of the Internal Revenue Service. The exclusive remedy for such is a civil action for damages against the United States in a district court of the United States.

26 U.S.C. § 6343(a) provides that the Secretary shall release levies under certain circumstances. Petitioners claimed that they suffered damages because an IRS levy was not released against certain of their property or property rights. However, plaintiffs alleged no facts that would show how Jared Harris, who was and is neither an officer or employee of the Internal Revenue Service, could have violated these provisions.

D. Failure to Release Lien Allegations

26 U.S.C. § 7432 provides that a taxpayer may bring a civil action for damages against the United States in a district court of the United States where an officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien as provided

for in 26 U.S.C. § 6325. 28 U.S.C. § 2410 permits the United States to be named as a party in certain actions affecting property on which the United States has a lien.

Petitioners alleged that Jared Harris violated these provisions but have alleged no facts which would show how Jared Harris, who was and is neither an officer or employee of the Internal Revenue Service, could have violated these provisions.

E. Failure to Provide a Tax Refund Allegations

26 U.S.C. § 7433 spells out the "exclusive remedy" for taxpayers damaged by the reckless or intentional disregard of any provision of Title 26 or any regulation promulgated thereunder by any officer or employee of the Internal Revenue Service. Again, the exclusive remedy for such is a civil action for damages against the United States in a district court of the United States.

26 U.S.C. § 6402 provides that the Secretary shall credit overpayments to the tax liability of a taxpayer or refund the balance to the taxpayer. Presumably petitioners claimed that they suffered damages because they did not receive credit for a tax overpayment or that they did not receive a refund of an overpayment of their tax liability. However, petitioners have alleged no facts which would show how Jared Harris, who was and is neither an officer or employee of the Internal Revenue Service, could have violated these provisions. Again, conclusory allegations with nothing more are insufficient to defeat an F.R.C.P. 12(b)(6) motion to dismiss for failure to state a claim.

F. Deprivation of Constitutional Rights Allegations

Petitioners allege a violation of 42 U.S.C. §§ 1983, 1985(2), 1985(3), 1986 and 1988 based on conclusory allegations that Jared Harris deprived them of their First and Fourteenth Amendment rights, their Fifth Amendment rights, their Eighth Amendment rights, their Thirteenth Amendment rights and their Fourteenth Amendment rights. The specific allegations against Jared Harris are difficult to separate from the generalized allegations against the other one hundred plus defendants, but it appears that petitioners alleged that Jared Harris received "favorable treatment" and "specially agreed upon rulings" from Idaho state court judges.

Margolis v. Ryan, 140 F.3d 850 (9th Cir. 1998) provides some guidance in this case. Following a jury trial in state court, Margolis filed a complaint in federal district court alleging that he was denied a fair trial because the state judge had conspired with the attorneys for the party on the other side to fix the outcome of the state court litigation. The federal district court granted summary judgment against Margolis. The Ninth Circuit Court of Appeals affirmed:

> . . . Thus, a losing party in a state court proceeding cannot file an action in federal court seeking reversal of the state court decision. Id. at 292.
>
> Further, a party cannot rely merely on allegations that a state judge issued erroneous orders to support a conspiracy claim under § 1983. Rather, the party must provide material facts that show an agreement among the alleged conspirators to deprive the party of his or her

civil rights. *Hale v. Harney*, 786 F.2d 688, 690 (5th Cir. 1986); *Arsenaux v. Roberts*, 726 F.2d 1022, 1024 (5th Cir. 1982). Otherwise, any party dissatisfied with a state court decision could pursue a claim of conspiracy in federal court. See *Ellis v. Cassidy*, 625 F.2d 227, 229 (9th Cir. 1980)

> Here, the district court properly determined that appellants presented no specific facts, other than alleging Judge Ramerman made erroneous decisions, from which a conspiracy could be inferred. Appellants' federal complaint contains the conclusory allegation that Judge Ramerman joined a conspiracy with Ryan and Strong that was evidenced by the Judge granting defendant's motions, failing to consider certain papers offered by the Margolises, accepting inadmissable evidence offered by defendants, and failing to sanction Strong and Tyan for lying and asserting unsupported legal positions. Appellants did not, however, allege in their complaint, or subsequently set forth, any facts to demonstrate an agreement between Judge Ramerman and Ryan and Strong. Thus, the essence of appellants' conspiracy claim is that they litigated and lost. As such, the appellants failed to support their allegations of a conspiracy in violation of § 1983. *Ellis*, 625 F.2d at 229.

The involvement of Jared Harris was limited to defending some of the parties against whom the petitioners – herein, Dean and Betty Bowles, brought the lawsuit which is reported as *Bowles v. Pro Indiviso, Inc.*, 132 Idaho 371, 973 P.2d 142 (1999). Because Jared Harris' involvement was limited to his role as a defense counsel at the trial court level in that reported case, his liability, if

any, under 42 U.S.C. § 1983 must have arisen from those activities. The Bowles (or the other petitioners for that matter) failed to allege any facts to demonstrate any agreement between Jared Harris and the state trial judge, Judge St. Clair, (or any other federal or state official) to deprive the petitioners of their civil rights. Moreover, there were no facts alleged to support petitioners' contention that Jared Harris acted under color of state law. An attorney performing a lawyer's traditional function cannot be considered to act under color of state law. *Polk County v. Dodson*, 454 U.S. 312, 319, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981). Vague and conclusory allegations are not sufficient to support a claim for civil rights violation based on a conspiracy. *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982).

Judge Garcia, in his Order of Dismissal, summarily and correctly addressed these claims as follows: First Amendment grounds, no specifications as to what the violation was and no allegations supporting their claim that their constitutionally protected right to free speech was violated; Fifth Amendment grounds, application only to federal government and federal actors; Eighth Amendment, no allegations regarding excessive bail or fines, cruel and unusual provision inapplicable because it applies only to those who have been convicted of a crime, of which there were no allegations in the complaint; Thirteenth Amendment, petitioners argued they were "slaves" because they had to pay taxes, patently frivolous; and Fourteenth Amendment, petitioners do not specify which provisions of the Fourteenth Amendment they are invoking and further have not alleged they are

members of a protected class and that they were somehow discriminated against on that basis.

CONCLUSION

Based on the foregoing, Defendant Jared Harris respectfully requests this Court deny the Petition for Writ of Certiorari, that the decision of the Ninth Circuit Court of Appeals affirming the District Court's dismissal with prejudice of all of plaintiffs' claims be affirmed in all respects.

DATED this 26th day of December, 2001.

Respectfully submitted,

COOPER & LARSEN
GARY L. COOPER

COOPER & LARSEN, CHARTERED
151 N. 3rd, Ste. 210
P.O. Box 4229
Pocatello, ID 83205-4229
Phone: (208) 235-1145
Fax: (208) 235-1182
Attorneys for Defendant Jared Harris

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

KOREEN MORGAN and JOHN BACH, et al., Plaintiffs, vs. FEDERAL AGENCIES AND OFFICERS, INTERNAL REVENUE SERVICES, et al., Defendants.	Case No. CIV-98-0383-E-EJG/PAN DEFENDANT JARED HARRIS' MOTION TO DISMISS AND/OR MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant Jared M. Harris, by and through his attorneys of record, Gary L. Cooper of Cooper & Larsen, and moves this Court for an Order dismissing Plaintiffs' Complaint against Jared M. Harris pursuant to Rule 8 of the Federal Rules of Civil Procedure and/or dismissing Plaintiffs' Complaint for failure to set a claim upon which relief can be granted against Jared M. Harris pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and/or granting summary judgment in favor of Jared M. Harris and against the Plaintiffs pursuant to Rule 56 of the Federal Rules of Civil Procedure

on the grounds and for the reasons that there are no genuine issues as to any material facts and defendant Jared M. Harris is entitled to judgment as a matter of law against Plaintiffs and each of them.

A memorandum of law in support of this motion and the Affidavit of Jared Harris are submitted herewith in support of the motion.

DATED this 13 day of August, 1999.

/s/ Gary L. Cooper
GARY L. COOPER

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of August, 1999, I mailed a true and correct copy of the foregoing to:

John N. Bach
1196 Sierra Madre Blvd.
San Marino, CA 91108

A. Dean Bowles and Betty Joan Bowles
12191 North 75 East
Idaho Falls, ID 83401

J.D. Ritchie and Elaine Ritchie
350 West Maple #36
Shelley, ID 83274

Detsel J. Parkinson and Earlene Parkinson
251 Ricks Avenue
Rexburg, ID 83440

Garen Hancock
3353 East 400 North
Lewisville, ID 83431

David Sasser
Carlton R. Ericson
Hamlin & Sasser
P.O. Box 16488
Boise, ID 83715

Brian Feldman, Esq
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044

Alva A. Harris
171 South Emerson
P.O. Box 479
Shelley, ID 83274

Betty Richardson
U.S. Attorney
P.O. Box 32
Boise, ID 83707

D. Marc Haws
U.S. Attorney
P.O. Box 32
Boise, ID 83707

/s/ Gary L. Cooper
GARY L. COOPER

Gary L. Cooper
COOPER & LARSEN, CHARTERED
151 N. 3rd, Ste. 210
P.O. Box 4229
Pocatello, Idaho 83205-4229
Telephone: (208) 235-1145
Facsimile: (208) 235-1182

UNITED STATES DISTRICT COURT,
DISTRICT OF IDAHO

JOHN N. BACH, A. DEAN BOWLES & BETTY JOAN BOWLES, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, et al.,	)	Case No. 98-383-E-EJG **AFFIDAVIT OF JARED M. HARRIS**
STATE OF IDAHO	)	
	)	ss:
County of Bingham	)	

JARED M. HARRIS, being first duly sworn, deposes and says:

1. That I am [sic] make this affidavit of my own personal knowledge.

2. That I am a attorney licensed to practice law in the State of Idaho.

3. In my capacity as an attorney, I represented Kent E. Carlson, Carolee Carlson, Alva Harris and Evelyn Harris in a law suit filed against them by Mid Mile Holding Trust, Eileen Hancock, Trustee, Alden Dean, Bowles, Trust Manager, and Betty Joan, Bowles.

4. My representation of my clients began on February 2, 1997 and ended on October 29, 1997.

5. That I have not been involved nor at any time have I been involved with any ownership or administrative capacity for Pro Indiviso, Inc.

6. I have had no contact with any representative of the I.R.S. in connection with the Mid-Mile Holding Trust vs. Pro Indiviso, Inc. case.

7. As it relates to the case of Mid-Mile Holding Trust vs. Pro Indiviso, Inc., I had no contact with Judge St. Clair except in the Courtroom.

8. That I have read the foregoing affidavit, know the contents thereof, and that I verily believe the same to be true.

Further affiant saith not.

/s/ Jared M. Harris
JARED M. HARRIS

SUBSCRIBED AND SWORN before me this 11th day of August, 1999.

/s/ Jennifer Gillins
Notary Public for Idaho
Residing at Blackfoot
My Commission Expires
10/10/2001

[SEAL] JENNIFER GILLINS
NOTARY PUBLIC
STATE OF IDAHO

Blackfoot, Idaho
Commission Expires 10/10/2001

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of August, 1999, I mailed a true and correct copy of the foregoing to:

John N. Bach
1196 Sierra Madre Blvd.
San Marino, CA 91108

A. Dean Bowles and Betty Joan Bowles
12191 North 75 East
Idaho Falls, ID 83401

J.D. Ritchie and Elaine Ritchie
350 West Maple #36
Shelley, ID 83274

Detsel J. Parkinson and Earlene Parkinson
251 Ricks Avenue
Rexburg, ID 83440

Garen Hancock
3353 East 400 North
Lewisville, ID 83431

David Sasser
Carlton R. Ericson
Hamlin & Sasser
P.O. Box 16488
Boise, ID 83715

Brian Feldman, Esq
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044

Alva A. Harris
171 South Emerson
P.O. Box 479
Shelley, ID 83274

Betty Richardson
U.S. Attorney
P.O. Box 32
Boise, ID 83707

D. Marc Haws
U.S. Attorney
P.O. Box 32
Boise, ID 83707

/s/ Gary L. Cooper
GARY L. COOPER

COOPER & LARSEN, CHARTERED
151 N. 3rd, Ste. 210
P.O. Box 4229
Pocatello, ID 83205-4229
Phone: (208) 235-1145
Fax: (208) 235-1182
Attorneys for Defendant Jared Harris

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

KOREEN MORGAN and JOE BACH, et al., Plaintiffs, vs. FEDERAL AGENCIES AND OFFICERS, INTERNAL REVENUE SERVICES, et al., Defendants.	Case No. CIV-98-0383-E-EJG/PAN **SUPPLEMENTAL AFFIDAVIT OF DEFENDANT JARED HARRIS' IN SUPPORT OF MOTION TO DISMISS AND/OR MOTION FOR SUMMARY JUDGMENT**

STATE OF IDAHO)
ss:
County of Bingham)

JARED M. HARIS, being first duly sworn upon oath, deposes and says:

1. That I am [sic] make this affidavit of my own personal knowledge.

2. That I am an attorney licensed to practice law in the State of Idaho.

3. That I have read the affidavit of J.D. Ritchie and examined the document attached to that affidavit.

4. I have never been an officer, director or shareholder of the corporation Scona, Inc. I am unable to read the name which is obscured on the form attached to the affidavit of J.D. Ritchie, but I can state with certainty that my name is not listed on the Idaho Corporation Annual Report Form which is attached to the affidavit of J.D. Ritchie.

Further affiant saith not.

/s/ Jared Harris
JARED M. HARRIS

SUBSCRIBED AND SWORN, before me this 31st day of August, 1999.

/s/ Jennifer Gillins
Notary Public for Idaho
Residing at Blackfoot
My Commission Expires
10/10/2001

[SEAL] JENNIFER GILLINS
– NOTARY PUBLIC
STATE OF IDAHO

Blackfoot, Idaho
Commission Expires 10/10/2001

CERTIFICATE OF SERVICE

I hereby certify that on the 1 day of September, 1999, I mailed a true and correct copy of the foregoing to:

John N. Bach
1196 Sierra Madre Blvd.
San Marino, CA 91108

A. Dean Bowles and Betty Joan Bowles
12191 North 75 East
Idaho Falls, ID 83401

J.D. Ritchie and Elaine Ritchie
350 West Maple #36
Shelley, ID 83274

Detsel J. Parkinson and Earlene Parkinson
251 Ricks Avenue
Rexburg, ID 83440

Garen Hancock
3353 East 400 North
Lewisville, ID 83431

David Sasser
Carlton R. Ericson
Hamlin & Sasser
P.O. Box 16488
Boise, ID 83715

Brian Feldman, Esq
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044

Alva A. Harris
171 South Emerson
P.O. Box 479
Shelley, ID 83274

Betty Richardson
U.S. Attorney
P.O. Box 32
Boise, ID 83707

D. Marc Haws
U.S. Attorney
P.O. Box 32
Boise, ID 83707

/s/ Gary L. Cooper
GARY L. COOPER

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

KOREEN MORGAN, et al.,

Plaintiffs,

v.

JAMES L. MASON, et al.,

Defendants.

_____/

CIV. NO. 98-0383-E-EJG/PAN

ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND

This matter is before the court on numerous defendants' motions to dismiss. However, a review of the complaint in this action has caused the court to *sua sponte* issue this order. For the reasons stated below, the complaint is dismissed with leave to amend pursuant to Rule 8 of the Federal Rules of Civil Procedure.

DISCUSSION

Rule 8(a) of the Federal Rules of Civil Procedure requires a complaint to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(e) requires that each averment of a pleading be "simple, concise and direct." These rules are designed to give the defendant "fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). A complaint which fails to comply with Rules 8(a) and 8(e) can be dismissed *sua sponte* by a court. *See McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996); *see also Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671 (9th Cir. 1981) (affirming a district court's

dismissal of a complaint with prejudice for failure to comply with Rules 8(a) and 8(e)).

Plaintiffs' complaint in the instant action fails under the standards of Rule 8. The complaint, brought by 13 plaintiffs, is 47 pages long with an additional 19 pages of exhibits. It contains 69 paragraphs and alleges numerous causes of action against 113 named defendants and 200 doe defendants. Broadly construed, it appears to allege a conspiracy between the IRS, City and County law enforcement, City and County prosecutors, City and County executives, and County and Federal judges to deprive plaintiffs of their constitutional rights. The complaint is verbose, convoluted and extremely difficult to comprehend. In addition, many of the allegations are irrelevant or stated in a conclusory fashion.

The complaint's major flaw, however, is its lack of specificity. No attempt is made to match up the specific factual allegations and the specific legal claims to specific defendants. In other words, the complaint does not state which defendants are liable on which of the claims. Instead, each claims says "defendants" ' conduct violated various rights of plaintiffs, without saying which defendants. However, some of the claims cannot be pled against *all* of the defendants. For example, plaintiffs' 42 U.S.C. § 1983 claims can only be brought against individuals acting under color of state law and not against individuals acting under color of federal law. *See Billings v. United States*, 57 F.3d 797, 801 (9th Cir. 1995). Thus, plaintiffs incorrectly allege § 1983 claims against the Internal Revenue Service defendants which plaintiffs contend acted under color of federal law. Other such examples exist in the complaint.

In addition to the complaint's lack of specificity in regards to the defendants, the complaint contains hardly any dates. Specific time frames are seldom alleged making it difficult for the court to determine whether the applicable statutes of limitations have run.

The court is cognizant of the fact that the plaintiffs are acting in *pro per.*[1] However, although liberally construed, *pro per* pleadings "must meet some minimum threshold in providing a defendant with notice of what it is that it allegedly did wrong." *Brazil v. United States Dept. of Navy,* 66 F.3d 193, 199 (9th Cir. 1995). Here, defendants have not been given fair notice of the claims against them.[2]

Although the court cannot rewrite plaintiffs' deficient complaint, the court will set forth some basic pleading requirements that plaintiffs must adhere to when drafting their amended complaint. First, plaintiffs must specify which defendants are liable for which claims. Some of the claims cannot be pled against all of the defendants. Second, plaintiffs must separate their claims so that only *one* claim is pled under each heading. As an example, on page 37 of the complaint the heading reads "Violations of 42 U.S.C. § 1983." Under this heading, it is alleged that defendants violated the First through Eighth and Thirteenth through Fourteenth Amendments. This is

---

[1] However, the court notes that one of the plaintiffs, John Bach, is a former attorney. (Complaint at ¶ 38(c).)

[2] For instance, the IRS defendants note in their motion to dismiss that "[i]t is not clear from the Complaint which IRS defendants took actions against which plaintiffs." (IRS Defendants' Motion to Dismiss at 3.)

really ten separate claims and should be pled as such. *See* Fed. R. Civ. P. 10(b) (requiring each claim founded upon a separate transaction or occurrence to be stated in a separate count).

Third, plaintiffs need only plead facts which are relevant to their various claims. Moreover, plaintiffs must identify which of those facts support which of their claims. Lastly, the court is in receipt of numerous defendants' motions to dismiss. Although the court declines to decide those motions at this time,[3] it notes that some of defendants' arguments appear to be meritorious. Thus, plaintiffs are encouraged to review the various defendants' motions and to make the appropriate adjustments to their amended complaint.

In that regard, the plaintiffs are also directed to read Rule 11 of the Federal Rules of Civil Procedure. Rule 11, which authorizes the court to impose sanctions when a complaint is frivolous, legally unreasonable, without factual foundation, or is brought for an improper purpose, explicitly applies to parties not represented by attorneys. *See Warren v. Guelker,* 29 F.3d 1386, 1390 (9th Cir. 1994).

---

[3] Most of the defendants have moved to dismiss the complaint pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. This rule provides that service must be made upon defendants within 120 days of the filing of the complaint. In determining whether to exercise its discretion to dismiss the complaint under this rule, the court must consider various factors such as whether the statute of limitations has run. Because plaintiffs' complaint is so poorly drafted, the court is unable to make those determinations at this time. However, defendants may renew their motions after the amended complaint is filed.

CONCLUSION

Based on the foregoing and pursuant to Rule 8 of the Federal Rules of Civil Procedure, the court dismisses plaintiffs' complaint with leave to amend. Plaintiffs are given thirty days leave to amend from the filing date of this order. **Failure to timely amend will convert this dismissal to one with prejudice.** Plaintiffs are also admonished that failure to amend so as to comply with Rule 8 may also result in dismissal with prejudice. *See Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671 (9th Cir. 1981).

In the event plaintiffs timely amend, *all* defendants (including the ones that have already answered or filed motions) shall answer or otherwise respond within twenty days after service of the amended complaint. To the extent the defendants' responses to plaintiffs' amended complaint will be identical to their responses to the initial complaint, the defendants may refile the same answers or motions.

IT IS SO ORDERED.

Dated: May 27, 1999

/s/ Edward J. Garcia
EDWARD J. GARCIA, JUDGE
UNITED STATES
DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

JOHN N. BACH, et al.,
Plaintiffs,

v.

JAMES L. MASON, et al.,
Defendants.
_____/

CIV. NO. 98-0383-E-EJG/PAN

ORDER OF DISMISSAL

This matter is before the court on various motions. Specifically, the following defense motions have been made: (1) the IRS defendants[1] and defendant Richard Wards' motion to dismiss; (2) the Bonneville County defendants,[2] the Jefferson County defendants,[3] the Madison County defendants,[4] defendant David Sasser, and

---

[1] The IRS defendants consist of James Mason, Cindy Mason, Phylis Gugin, Mark Davis, Al Seefried, Cheryl Mosby, Kay Mosher, Hester Pulling, Keith Farrer, Jack Cheskaty, Gerald Heschell, Richard Owens, Steve Hines, Donald Jensen, Pam Bigelow, Sid Beckstead, Clive London, Merry Trudeau, and Randy Harper.

[2] The Bonneville County defendants consist of Bonneville County, Bonneville County Sheriff Byron Stommel, Kay Cortez, Gina Dixon, Charlotte Munns, Paul Wild, Glenn Huderman, Bonneville County Clerk Ron Longmore, and Bonneville County Assessor P. Blake Mueller.

[3] The Jefferson County defendants consist of Jefferson County, Jefferson County Recorder Connie Keller, Jefferson County Sheriff Blair Olsen and Stephen Clark.

[4] The Madison County defendants consist of Madison County, Madison County Recorder Beth Reese, Madison County Assessor Lyle Saurey, Madison County Sheriff Greg Moffatt,

Hamlin & Sassers' motion to dismiss and/or quash service; (3) defendant Jared Harris' motion to dismiss and/or motion for summary judgment; and (4) the federal judges[5] and United States Attorney Betty Richardsons' motion to dismiss. In addition, plaintiffs have filed various motions. After carefully reviewing the complaints and the documents submitted in connection with the motions, the court has determined that the motions are appropriate for resolution without oral argument. Accordingly, the motions are ordered submitted. For the reasons set forth below, plaintiffs' amended complaint is dismissed with prejudice.

BACKGROUND

On September 30, 1998, plaintiffs in *pro per* filed this action in the District of Idaho. Broadly construed, the complaint appeared to allege a grand conspiracy among various city, county, state, and federal officials, as well as private parties, to deprive plaintiffs of their constitutional rights. More specifically, the plaintiffs alleged that the IRS wrongfully seized and sold their properties in violation of the Tax Code and that law enforcement and the courts ignored their obligations to protect plaintiffs' rights. Since the complaint named each district judge and magistrate judge in the District of Idaho as defendants, the case

---

Madison County Prosecutor Sid Brown, and Madison County employees Terry Bair and Kip Manwaring.

[5] The federal judges consist of United States District Judge Edward J. Lodge, United States District Judge B. Lynn Winmill, United States Magistrate Judge Mikel H. Williams, and United States Magistrate Judge Larry M. Boyle.

was reassigned to the undersigned of the Eastern District of California.

Thereafter, this court allowed six of the plaintiffs to withdraw from the action. By this time, many of the defendants had filed motions to dismiss. Nevertheless, on June 1, 1999, the court issued an order in which it *sua sponte* dismissed plaintiffs' complaint, without prejudice, for failure to comply with Rule 8 of the Federal Rules of Civil Procedure. On June 15, 1999, the plaintiffs sought and were granted a thirty day extension of time in which to file their amended complaint. Plaintiffs' amended complaint was then filed on August 2, 1999.[6] In response, the above listed motions were filed and the court now issues the following order.

DISCUSSION

A. Federal Rule of Civil Procedure 8

On June 1, 1999, this court issued an order in which it *sua sponte* dismissed plaintiffs' complaint, with leave to amend, for failure to comply with Rule 8 of the Federal Rules of Civil Procedure. In that order, the court specifically listed the complaint's major flaws and then set forth some basic pleading requirements for plaintiffs to adhere to when they drafted their amended complaint. The court cautioned plaintiffs that failure to amend so as

---

[6] The order granting plaintiffs an extension of time to file their amended complaint stated that the complaint needed to be filed with the court by August 1, 1999. However, since August 1 was a Sunday, plaintiffs properly filed their complaint on Monday, August 2.

to comply with Rule 8 could result in dismissal with prejudice. After receiving a thirty day extension, plaintiffs filed their amended complaint on August 2, 1999.

Now, the IRS defendants, defendant Richard Ward, the federal judges, and United States Attorney Betty Richardson move to dismiss the amended complaint pursuant to Rule 8. A complaint which fails to comply with Rule 8 may be dismissed with prejudice pursuant to Rule 41(b). *See Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 673 (9th Cir. 1981). Rule 41(b) provides in part that a defendant may move for dismissal of an action if a plaintiff fails to comply with the Federal Rules of Civil Procedure or an order of the court.

Although plaintiffs in the instant action have made cosmetic changes to their complaint, it still does not comply with either Rule 8 or this court's previous order. In fact, the amended complaint is as confusing, verbose, and unintelligible as the original complaint. In addition, it still lacks the required specificity. For example, plaintiffs' principal allegations regard the seizure of their properties. Yet plaintiffs do not make clear exactly which properties were seized, exactly which defendants seized these properties, and exactly when these seizures occurred. Conclusory allegations do not give the defendants fair notice of what the plaintiffs' claims are and the grounds upon which they rest. *See Conley v. Gibson*, 355 U.S. 41, 47 (1957).

Moreover, it appears that plaintiffs have all but ignored this court's pleading suggestions. For instance, in the order this court stated that "plaintiffs must specify which defendants are liable for which claims. Some of the

claims cannot be pled against all of the defendants." Despite this admonition, plaintiffs have attempted yet again to bring most of the federal claims against all of the defendants. As discussed more fully below, this is improper. Also in the order, the court noted that "the complaint contains hardly any dates." Plaintiffs have not corrected this flaw in the amended complaint thus making it difficult for the court to determine whether their complaint is time-barred. Lastly, despite being told to do so, plaintiffs have failed to specify which facts support which of their claims.

Before dismissing an action under Rule 41(b), however, a district court should first attempt other less drastic alternatives. *See Nevijel*, 651 F.2d at 674. "These less drastic alternatives [can] include allowing further amended complaints, allowing additional time, or insisting that [the party] associate experienced counsel." *Id.* This court has tried less drastic alternatives in this case to no avail. First, the court allowed plaintiffs to amend their complaint after giving them explicit drafting instructions. Second, the court granted plaintiffs a thirty day extension of time in which to file their amended complaint. Lastly, the court directed the plaintiffs to read Rule 11 of the Federal Rules of Civil Procedure and noted that Rule 11's sanction provision applies to parties in *pro per.* Despite this warning, plaintiffs have not indicated to the court that they wish to hire an attorney. Accordingly, the court finds that dismissal of this action under Rule 41(b) with prejudice is appropriate.

Again, the court recognizes that the plaintiffs are proceeding without legal counsel. However, "[p]ro se litigants must follow the same rules of procedure that

govern other litigants." *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). In addition, the lead plaintiff in this case, John Bach, is a former attorney. He is therefore presumably capable of drafting a comprehensible and legally sufficient complaint setting forth plaintiffs' claims.

For the above reasons, the IRS defendants, defendant Richard Ward, the federal judges, and United States Attorney Betty Richardsons' motion to dismiss pursuant to Rule 8 is granted with prejudice. The action is also dismissed with prejudice as to all defendants on this basis. *See Silverton v. Department of Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981) (*sua sponte* dismissal of action against non-moving defendants is appropriate where "such defendants are in a position similar to that of moving defendants or where claims against such defendants are integrally related").

Although this ruling disposes of the entire action, some of the defendants have moved to dismiss plaintiffs' complaint on other grounds. As discussed below, these grounds provide alternative reasons for dismissing plaintiffs' complaint.

B. Federal Rule of Civil Procedure 4(m)

A Rule 12(b)(5) motion to dismiss for insufficiency of service of process has been made in all of the defense motions except for Jared Harris'. Specifically, these defense motions contend that plaintiffs have failed to comply with Rule 4(m) of the Federal Rules of Civil Procedure.

Rule 4(m) requires dismissal without prejudice when a defendant is not served with a copy of the summons and complaint within 120 days after the filing of the complaint. Here, plaintiffs filed their original complaint on September 30, 1998. Thus, the 120 day period would have expired on January 28, 1999. The moving defendants have submitted affidavits which demonstrate that none of them were served within the 120 day period required by Rule 4(m).[7]

Nevertheless, Rule 4(m) requires a court to extend the time for service for an appropriate period if the plaintiffs show good cause for the failure to effect timely service. If good cause is not shown, it is discretionary with the court whether to grant an extension or whether to dismiss the action without prejudice. In this case, plaintiffs have not explained their failure to effect timely service of the original complaint. In fact, plaintiffs have also failed to timely serve all of the defendants with a copy of the amended complaint.

Therefore, the court could dismiss this action against the moving defendants without prejudice pursuant to Rule 4(m). However, the court has already concluded that dismissal of this action against all defendants should be with prejudice for plaintiffs' failure to comply with Rule 8. This resolution makes it unnecessary for the court to dismiss the action without prejudice per Rule 4(m) or to decide the other service of process motions that defendants have filed.

---

[7] The court also notes that there are many other defendants in this case which have not been timely served or have never been served.

C. Federal Rule of Civil Procedure 12(b)(6)

Next, the IRS defendants, defendant Richard Ward, and defendant Jared Harris have filed various motions to dismiss pursuant to Rule 12(b)(6) for failure of plaintiffs' complaint to state claims upon which relief can be granted. The sufficiency of each of the federal claims will be briefly discussed below.

1. RICO Claim

Plaintiffs first allege that defendants have violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* To state a claim under RICO plaintiffs must demonstrate: (1) the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *See Sun Savings and Loan Association v. Dierdorff,* 825 F.2d 187, 191 (9th Cir. 1987). In addition, plaintiffs must allege a causal connection between the pattern and the injury to the plaintiffs. *See Grimmett v. Brown,* 75 F.3d 506, 510 (9th Cir. 1996).

In the amended complaint, plaintiffs make the following allegations regarding RICO:

> All of said defendants and each of them, have engaged, participated and conduct, and continue this date to so conduct themselves, having committed more than two (2) predicate acts involving interstate commerce, so as to violated, jointly and severally, in multi-layers of illegal and corrupt activities and pursuits, the Federal R.I.C.O. Act, 18 U.S.C. §§ 1961-1968. (*See* Amended Compl. ¶ 28.)

These general and conclusory allegations fail to state a RICO claim. These statements fail to identify the actions of each defendant or to allege the predicate acts necessary to allege a pattern of racketeering activities with the requisite specificity. Accordingly, plaintiffs' RICO claim is dismissed for failure to state a claim upon which relief can be granted.

2. 26 U.S.C. §§ 6331, 6343, and 7426

Next, plaintiffs allege that some of the defendants have violated 26 U.S.C. §§ 6331, 6343, and 7426. Section 6331 authorizes the federal government to levy upon, distrain, and seize the property or property interests of taxpayers who neglect or refuse to pay taxes. Section 6343 provides the basis for releasing property which has been levied upon. Neither section provides for a right of action.

Section 7426 provides that a third party may file a civil action against the United States in federal court as the remedy for a wrongful levy. This section is not applicable here because first the United States is not a named defendant and second the plaintiffs are the taxpayers levied upon and not third parties. (*See* Amended Compl. ¶¶ 18-19.) Thus, these claims are also dismissed.

3. 226 U.S.C. §§ 7433 and 6343(a)

Plaintiffs also allege that 26 U.S.C. §§ 7433 and 6343(a) were violated. Section 7433 authorizes taxpayers to bring a civil action for damages against the United States for certain unauthorized collection actions. The

only authorized defendant under this code section, however, is the United States. Since the United States is not a named defendant in this action and since plaintiffs cannot bring an action under this section against the other defendants, this claim must be dismissed. Plaintiffs' allegations under section 6343 have already been discussed and dismissed above.

4. 26 U.S.C. § 7432 and 28 U.S.C. § 2410

Plaintiffs allege next that 26 U.S.C. § 7432[8] and 28 U.S.C. § 2410 were violated. Section 7432 of Title 26 authorizes civil damages for failure of an officer or employee of the IRS to release a lien. Section 2410 of Title 28 permits the United States to be named as a party in certain actions affecting property on which the United States has a lien. Only the United States can be sued under these two code sections. Since the United States is not a named defendant in this action, these claims must be dismissed.

5. 42 U.S.C. § 1983

Plaintiffs have alleged numerous claims pursuant to 42 U.S.C. § 1983. However, plaintiffs improperly attempt to bring these claims against *all* of the defendants. As noted in the court's previous order, claims under 42 U.S.C. § 1983 can only be brought against individuals

---

[8] The code section plaintiffs cite, 28 U.S.C. § 7432, does not exist so the court assumes that plaintiffs meant to cite 26 U.S.C. § 7432.

acting under color of state law. *See Billings v. United States*, 57 F.3d 797, 801 (9th Cir. 1995). Accordingly, plaintiffs' § 1983 claims must be dismissed to the extent that they are brought against individuals acting under color of federal law or non-governmental individuals.

With that in mind, the court now turns to plaintiffs' various § 1983 claims.

a. First Amendment

Plaintiffs allege in a conclusory fashion that their rights as established by the First Amendment were violated. Plaintiffs do not specify what the First Amendment violation is or the facts supporting it. Since plaintiffs make no allegations supporting their claim that their constitutionally protected right to free speech was violated, this claim is dismissed.

b. Fifth Amendment

Next, plaintiffs allege, pursuant to 42 U.S.C. § 1983, that *all* of the defendants violated their rights under the Fifth Amendment. However, the Fifth Amendment applies to and restricts only the federal government and federal actors. *See Geneva Towers Tenants Organization v. Federated Mortgage Investors*, 504 F.2d 483, 487 (9th Cir. 1974). As noted above, claims under 42 U.S.C. § 1983 cannot be brought against individuals acting under color of federal law. Thus, the Fifth Amendment allegations are improper and are accordingly dismissed.

c. Eighth Amendment

An allegation that defendants violated the Eighth Amendment is pled next. The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Plaintiffs do not specify which clause of the Eighth Amendment they invoke. Although there is an allegation that some of the plaintiffs were arrested, there are no allegations regarding bail or fines. In addition, the cruel and unusual provision is inapplicable here because it applies only to those who have been convicted of a crime. *See City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 243-44 (1983). There are no allegations that any of the plaintiffs were ever convicted of a crime.

d. Thirteenth Amendment

Plaintiffs also allege that defendants violated the Thirteenth Amendment, the Amendment which abolished slavery and involuntary servitude. Plaintiffs appear to be arguing that they are "slaves" because they have to pay income taxes. That is patently frivolous. First, the Sixteenth Amendment to the Constitution gives Congress the power "to lay and collect taxes on incomes." Second, the Ninth Circuit has already considered and rejected such arguments. *See, e.g., Kasey v. Commissioner of Internal Revenue*, 457 F.2d 369, 370 (9th Cir. 1972). Accordingly, plaintiffs' claims under the Thirteenth Amendment are dismissed.

e. Fourteenth Amendment

Plaintiffs' last 42 U.S.C. § 1983 claim involves the Fourteenth Amendment. Again, as with previous claims, plaintiffs do not specify which provisions of the Fourteenth Amendment they are invoking. Accordingly, they have failed to state a claim upon which relief can be granted under the Fourteenth Amendment. Nevertheless, to the extent plaintiffs are purporting to bring a claim under the equal protection clause, they fail. "To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Plaintiffs have not alleged that they are members in a protected class and have not alleged any information in which that can be inferred.

6. 42 U.S.C. § 1985(2)

Next, plaintiffs allege that defendants violated 42 U.S.C. § 1985(2). "Section 1985(2) contains two clauses that give rise to separate causes of action." *See Portman v. County of Santa Clara*, 995 F.2d 898, 908 (9th Cir. 1993). The first clause concerns access to federal courts. *Id.* at 909. Although plaintiffs contend that they were denied access to this court, they provide no factual allegations to support that statement. The second clause concerns access to state or territorial courts. *Id.* However, "the second clause of section 1985(2) [requires] an allegation of class-based

animus for the statement of a claim under that clause." *Id.* Here, plaintiffs have not alleged that they were denied access to any state courts because they are members of a protected class. Overall, plaintiffs have no claims under 42 U.S.C. § 1985(2).

7. 42 U.S.C. § 1985(3)

Plaintiffs also allege that defendants violated 42 U.S.C. § 1985(3). To properly plead a claim under § 1985(3), a complaint must have sufficient allegations that defendants' conduct was motivated by a racial or otherwise class-based, invidiously discriminatory animus. *Trerice v. Pedersen*, 769 F.2d 1398, 1402 (9th Cir. 1985). "Such animus constitutes an essential element of a cause of action under section 1985(3)." *Id.*

Here, plaintiffs' complaint does not allege the requisite animus, nor does it contain any factual allegations from which a race or class-based animus can be inferred. Because the complaint does not contain the necessary allegations, the 42 U.S.C. § 1985(3) claim is unsupportable and is hereby dismissed.

8. 42 U.S.C. §§ 1986 and 1988

Plaintiffs' next to last federal claims are brought pursuant to 42 U.S.C. §§ 1986 and 1988. First, as to plaintiffs' claim under § 1986, the Ninth Circuit has adopted the broadly accepted principle that a cause of action is not provided under 42 U.S.C. § 1986 absent a valid claim for relief under § 1985. *Trerice*, 769 F.2d at 1403. Accordingly,

plaintiffs' § 1986 claim must be dismissed since their § 1985 claims were dismissed.

Second, section 1988 of Title 42 of the United States Code provides that in certain civil rights actions the district court may, in its discretion, award the prevailing party reasonable attorneys' fees. Section 1988, however, does not provide an independent cause of action for civil rights violations. *See Brower v. Invo County*, 817 F.2d 540, 546 (9th Cir. 1987), rev'd on other grounds, 489 U.S. 593 (1989). Thus, plaintiffs have failed to state a claim under § 1988.

9. 26 U.S.C. §§ 6402 and 7433

Lastly, plaintiffs allege 26 U.S.C. §§ 6402 and 7433 were violated. Section 6402 deals with credits and refunds. Plaintiffs do not clarify the nature of their claims under § 6402. Nevertheless, § 6402(f) provides that "[n]o court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c), (d), or (e)." Therefore, to the extent the plaintiffs are asking this court to restrain or review a reduction, this court lacks jurisdiction. As for plaintiffs' allegations under section 7433, they have already been discussed and dismissed above.

D. Plaintiffs' Motions

In addition to the above defense motions, the court has under submission various motions filed by the plaintiffs. First, plaintiffs have moved for entry of default

judgment against defendants Pro Indiviso, Inc., Scona Inc., Alva Harris, Jared Harris, Evelyn Harris, Kent Carlson, Grant Hann, and Darrell Harris. Second, plaintiffs request that the court sanction these defendants and strike their answers and motions for summary judgment. Lastly, plaintiffs seek a permanent injunction to restrain these defendants from selling any real properties obtained from the plaintiffs. Each of these motions will be discussed in turn.

1. Motion for Entry of Default Judgment

Pursuant to Rule 55 of the Federal Rules of Civil Procedure, plaintiffs seek entry of default judgment against defendants Pro Indiviso, Inc., Scona, Inc., Alva Harris, Jared Harris, Evelyn Harris, Kent Carlson, Grant Hann, and Darrell Harris. Rule 55 describes a two-step process by which a default judgment may be entered. First, under Rule 55(a), a plaintiff may request the clerk to enter a default against a party upon a showing that the party "has failed to plead or otherwise defend as provided by these rules. . . . " After entry of default, and upon application by the plaintiff, a default judgment may then be entered by the clerk or by the court pursuant to Rule 55(b).

Plaintiffs have improperly asked this court to enter a default judgment without first obtaining an entry of default by the clerk. Since plaintiffs' motion for entry of default judgment is improper, it is denied.

2. Motion for Sanctions

Next, plaintiffs ask the court to sanction these defendants and to strike their answers and motions due to their alleged default. An explanation of some terminology is in order here. When a defendant is in "default," it simply means that "the defendant has failed to plead or otherwise respond to the complaint within the time required by the Federal Rules." *See* Schwarzer, Tashima & Wagstaffe *Federal Civil Procedure Before Trial* ¶ 6:2 (1999). Defendant's default by itself, however, has no legal consequences. *Id.* at ¶ 6:3. "Until the default is 'entered' by the court clerk, defendant can still appear in the action." *Id.* In other words, "if no default has yet been 'entered,' the clerk must accept for filing defendant's pleadings or motions although they are filed late. Once they are filed, it is too late for entry of default, and defendant can proceed with its defense." *Id.*

Since no default was entered here, the clerk properly accepted the said defendants' answers and motions. Therefore, plaintiffs' motion for sanctions and to strike defendants' answers and motions is denied.

3. Motion for Permanent Injunction

Finally, plaintiffs seek a permanent injunction to restrain certain defendants from selling any real properties they may have obtained from the plaintiffs. In addition, plaintiffs seek to require defendants to return plaintiffs' real properties. The requirements for the issuance of a permanent injunction, which are not cited by the plaintiffs, are "the likelihood of substantial and

immediate irreparable injury and the inadequacy of remedies at law." *LaDuke v. Nelson*, 762 F.2d 1318, 1330 (9th Cir. 1985), modified, 796 F.2d 309 (9th Cir. 1985). The court declines to address plaintiffs' request for a permanent injunction because plaintiffs did not even make an attempt to show the court that they meet the specific standards which permit the grant of a permanent injunction.

CONCLUSION

1. The IRS defendants, defendant Richard Ward, the federal judges, and United States Attorney Betty Richardsons' motion to dismiss pursuant to Rule 8 is granted. For the reasons stated above, this action is now dismissed with prejudice as to *all* defendants.

2. The IRS defendants, defendant Richard Ward, and defendant Jared Harris' motion to dismiss pursuant to Rule 12(b)(6) is also granted.

3. These resolutions moot the need to decide any motions brought pursuant to Rule 12(b)(5) and Rule 4.

4. Plaintiffs' motion for entry of default judgment, for sanctions, and for a permanent injunction is denied.

5. The Clerk of Court is directed to close this file.

IT IS SO ORDERED.

Dated: October 21, 1999

/s/ Edward J. Garcia
EDWARD J. GARCIA, JUDGE
UNITED STATES DISTRICT
COURT

PLAINTIFFS/APPELLANTS IN PRO PER
JOHN N. BACH
1196 Sierra Madre Blvd.
San Marino, CA 91108
(626) 288-6450

J. D. RITCHIES &
ELAINE RITCHIE

DEAN BOWLES &
BETTY BOWLES
12191 N. 75 E
Idaho Falls, ID 83401
(208) 529-8050

DETSEL J. PARKINSON
& EARLENE PARKINSON
251 Ricks Avenue
Rexburg, ID 83440
(208) 356-6924

GAREN HANCOCK
3353 E. 400 N.
Lewisville, ID 83431
(208) 754-0084

UNITED STATES DISTRICT COURT,
DISTRICT OF IDAHO

FILE NO: CV 98-383-E-EJG, Assigned

JOHN N. BACH, et al,

Plaintiffs/Appellants,

v.

UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, et al,

Defendants/Respondents.

_____/

NINTH CIRCUIT DKT NO:

NOTICE OF APPEAL TO U.S. COURT OF APPEALS, NINTH CIRCUIT, FROM FINAL ORDER OF DISMISSAL WITH PREJUDICE, DATED October 21, 1999, But no Served Immediately From U.S.D.C., Idaho, CV 98-383-E-EJG, Assigned

NOTICE IS HEREBY GIVEN that all the plaintiffs/appellants, to wit; JOHN N. BACH, A. DEAN BOWLES & BETTY BOWLES, J.D. RITCHIE & ELAINE RITCHIE,

DETSEL J. PARKINSON AND EARLENE PARKINSON AND GAREN HANCOCK, all appearing in pro per/se herein, do hereby appeal to the UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT from that final order ORDER OF DISMISSAL WITH PREJUDICE, which is dated October 21, 1999 but which order was served without any certificate of service being finalized upon these appellants, and which service was staggered, and capriciously mailed to the individual appellants herein appealing sometime, from the earliest on October 26, 1999 until or through November 4, 1999.

The Plaintiffs/Appellants attach hereto the first eight (8) pages of their AMENDED COMPLAINT, filed August 2, 1999, and which per said ORDER OF DISMISSAL WITH PREJUDICE of October 21, 1999, along with the CERTIFICATE OF SERVICE BY MAIL page 30 to said AMENDED COMPLAINT, showing the attorneys for the defendants/respondents that had appeared in said underlying U.S.D.C., District of Idaho action CV 98-383-E-EJG, Assigned. Per the provisions of FRAP, Rule 12(b) no Representation Statement is required since this NOTICE OF APPEALS is filed by pro se Appellants. Rules for Ninth Circuit of Appeals, Rule 3-2(a)(3).

If for any reason further information or documents are needed to be filed herein, each Plaintiff/Appellant request they each be notified immediately by telephone at the numbers set forth for each on the upper left of page 1, supra, and that they also be notified by mail, per the mailing addresses they also set forth on the upper left corner of page 1, supra.

DATED: November 19, 1999

/s/ A. Dean Bowles
A. DEAN BOWLES

/s/ John N. Bach
JOHN N. BACH

/s/ J. D. Ritchie
J. D. RITCHIE

/s/ Betty Bowles
BETTY BOWLES

/s/ Detsel J. Parkinson
DETSEL J. PARKINSON

/s/ Elaine Ritchie
ELAINE RITCHIE

/s/ Garen Hancock
GAREN HANCOCK

/s/ Earlene Parkinson
EARLENE PARKINSON

NOTE: This NOTICE OF APPEAL was telephonically discussed with "Howard" of the Office of the Clerk, U.S. Court of Appeals, Ninth Circuit, 95 7th Street, San Francisco, CA 94103-1526, whose telephone number is (415) 556-9751.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN N. BACH; GAREN HANCOCK; DETSEL J. PARKINSON; A. DEAN BOWLES; BETTY J. BOWLES; JABEZ D. RITCHIE; ELAINE RITCHIE, Plaintiffs-Appellants, v. CINDY MASON; PHYLIS J. GUGIN; MARK DAVIS; AL SEEFRIED; CHERYL MOSBY; KAY MOSHER; HESTER PULLING; KEITH FARRER; JACK CHESKATY; GERALD H. HESCHELL; RICHARD OWENS; STEVE HINES; DONALD JENSEN; PAM BIGELOW; SID BECKSTEAD; CLIVE LONDON; MERRY TRUDEAU; RANDY HARPER, Federal agencies and officers, Internal Revenue Service; EDWARD J. LODGE; B. LYNN WINMILL; LARRY BOYLE; MICHAEL H. WILLIAMS, Federal Judges; RICHARD WARD; BETTY RICHARDSON, United States	No. 99-36180 D.C. No. CV-98-00383-EJG MEMORANDUM[1] (Filed Feb. 21, 2001)

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

Attorneys Office; BONNEVILLE COUNTY; BONNEVILLE COUNTY SHERIFF; BYRON STOMMELL; KAY CORTEZ; GINA DIXON; CHARLOTTE MUNNS; PAUL WILD; GLENN HUDERMAN; BONNEVILLE COUNTY CLERK; RON LONGMORE; BONNEVILLE COUNTY ASSESSOR; JEFFERSON COUNTY; JEFFERSON COUNTY RECORDER; JEFFERSON COUNTY SHERIFF; BLAIR OLSEN; JEFFERSON COUNTY PROSECUTOR; ROBIN DUNN; STEPHEN CLARK; MADISON COUNTY, IDAHO; MADISON COUNTY RECORDER; BETH REESE; MADISON COUNTY ASSESSOR; LYLE SAUREY; MADISON COUNTY SHERIFF; GREGG MOFFAT; TERRY BAIR; MADISON COUNTY PROSECUTOR; SID BROWN; KIP MANWARING; PRO INDIVISO, INC., an Idaho Corp.; SCONA, INC., an Idaho Corp.; ALVA A. HARRIS; JARED HARRIS; EVELYN HARRIS; KENT CARLSON; CARALEE CARLSON; GRANT E. HANN; DARRELL J. HARRIS; RAY RIGBY,

Defendants-Appellees,

and

STATE OF IDAHO TAX COMMISSION; DARYL JONES; ATTORNEY GENERAL'S OFFICE; ALAN G. LANCE; IDAHO STATE BAR, State agencies and officers; RICHARD J. ST. CLAIR, Judge; TED W. WOOD, Judge; FREMONT COUNTY, IDAHO; FREMONT COUNTY PROSECUTOR; FREMONT COUNTY SHERIFF; TERRY THOMPSON; FREMONT COUNTY CLERK & RECORDER; MICKIE FUNKE; JEROME COUNTY; JEROME COUNTY SHERIFF; JEROME COUNTY CLERK; TETON COUNTY, IDAHO; TETON COUNTY CLERK; TETON COUNTY ASSESSOR; CITY OF ST. ANTHONY; CITY POLICE; MAYOR, CITY OF ST. ANTHONY; ROY PARKER; CITY ATTORNEY, CITY OF ST. ANTHONY; LISA BERTOSCH; TIM WILSON; CARLTON ERICKSON; ST. ANTHONY CITY COUNCIL; EVELYN MASON; RICHARD LAW; US BANK/WEST ONE BANK; MARK BYERLY; LARRY DROLLINGER; NELDA DROLLINGER; JOHN SANDERS; BRUCE OLSEN; WILLIAM TULLOCK; BOBBIESUE TULLOCK; DOES 1-200,

Defendants.

Appeal from the United States District Court
for the District of Idaho
Edward J. Garcia, District Judge, Presiding

Submitted February 12, 2001[2]

Before: LEAVY, THOMAS, and RAWLINSON, Circuit Judges.

Appellants appeal pro se the district court's dismissal of their action with prejudice for failing to comply with the court's order to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of discretion a district court's Fed. R. Civ. P. 41(b) dismissal and affirm. *See McHenry v. Renne*, 84 F.3d 1172, 1177-78 (9th Cir. 1996).

The clerk shall file appellants' additional reply briefs previously received on May 26, 2000, and June 8, 2000. The requested relief contained therein is denied.

AFFIRMED.

---

[2] Because we unanimously find this case suitable for decision without oral argument, we deny appellants' request for oral argument. *See* Fed. R. App. P. 34(a)(2).

963 P.2d 1178

PRO INDIVISO, INC.,
Plaintiff-Respondent,

v.

MID-MILE HOLDING TRUST as nominee of A. dean Bowles and Betty J. Bowles, his wife, and A. Dean Bowles and Betty J. Bowles, his wife, individually,
Defendants-Appellants.

No. 23731.

Supreme Court of Idaho,
Boise, May 1998 Term.

Aug. 28, 1998.

A. Dean Bowles and Betty J. Bowles, Idaho Falls, pro se, Defendants-Appellants.

Alva A. Harris, Shelley, for Plaintiff-Respondent.

TROUT, Chief Justice.

This is an appeal from the district court's grant of partial summary judgment in favor of the plaintiff, Pro Indiviso, Inc. (Pro Indiviso), for a writ of assistance.

I.

BACKGROUND

A. Dean and Betty Bowles, by their own admission, owe money to the United States for failure to pay income taxes. In July 1993, Dean and Betty filed a deed in which they conveyed title to their real property to Mid-Mile Holding Trust (Mid-Mile). The deed does not state for whom the property is being held in trust and there is no trust document in the record. On March 1, 1994, the

Internal Revenue Service (I.R.S.) filed a lien on the property for unpaid taxes. The lien named Mid-Mile as nominee of Dean and Betty Bowles. A tax sale was held in June 1995, at which Pro Indiviso purchased the property for $32,100. The I.R.S. issued Pro Indiviso a certificate of sale. After the period of redemption had expired, Pro Indiviso received a deed from the I.R.S. which it recorded on December 14, 1995.

On March 12, 1996, Pro Indiviso filed a verified complaint against Mid-Mile as nominee of Dean and Betty Bowles seeking ejectment, a writ of assistance and damages. Mid-Mile was never served, but Dean and Betty were served and Betty entered a general appearance by filing a "Motion to Dismiss Due to Fraud of Internal Revenue Service, etc." On April 5, 1996, Pro Indiviso filed a motion for a writ of assistance and scheduled a hearing on all pending motions. On April 24, Betty filed a motion to dismiss and a motion to set aside hearing, but did not schedule a hearing on either motion. On May 3, Pro Indiviso filed a motion to strike Betty's "Motion to Set Aside Due to Fraud of Internal Revenue Service, etc." and a notice of hearing for May 13. On May 10, Betty filed an objection to appointment of magistrate.

A hearing was held on May 13, 1996. Counsel and a representative for Pro Indiviso attended. Neither Dean, Betty, Mid-Mile nor an attorney representing them attended the hearing. The judge dismissed the objection to appointment of magistrate since the matter was before a district court judge and denied Betty's other motions. The district court treated Pro Indiviso's motion for a writ of assistance as a motion for partial summary judgment. The court granted the motion holding that Pro Indiviso

had submitted a verified complaint that it held a recorded deed to the property, and that Dean and Betty had produced no admissible evidence or affidavits to dispute this fact.

Following the hearing, Betty filed a "Judicial Notice of Objection to Hearing, etc.," two motions for summary judgment, and a motion to strike. Dean filed a motion to dismiss due to fraud (mistaken identity), a "Judicial Notice" (claiming the district court judge was a magistrate), and a motion for default judgment. Since no hearing had ever been scheduled and Pro Indiviso had never responded to any of the motions, the district court issued a memorandum decision and order on July 2, 1996. The court denied the objections to the hearing because Dean and Betty had produced no evidence why they could not have appeared. The motions for summary judgment were denied because they simply restated the previous "Motion to Dismiss Due to Fraud of Internal Revenue Service, etc." and contained no affidavits or admissible evidence. The motion to strike Pro Indiviso's motion to strike was denied as moot since Pro Indiviso's motion had previously been denied. The motion to strike because of mistaken identity was denied because there was no basis in law for granting the motion.[1] The court treated the "Judicial Notice" (objection to magistrate) as a motion for reconsideration and denied it because no new facts had been presented. The motion for a default judgment was dismissed because no affidavits, supporting briefs, or

---

[1] The motion was based on the fact that in the complaint the defendant's names were spelled in all uppercase letters.

notice of hearing had been filed as required by I.R.C.P. 7(b)(3).

Dean and Betty continued to file motions including a "Request for Evidenciary [sic] Hearing" (Dean), a motion for reconsideration (Betty), a motion to dismiss based on lack of subject matter jurisdiction (Dean), a motion for default judgment (Betty), a renewed motion to dismiss and vacate the sale presented as an affidavit (Betty), and a renewed motion to dismiss due to I.R.S. fraud presented as an affidavit and memorandum of law (Dean). A hearing was held on the motions which was attended by Dean, Betty, and counsel for Pro Indiviso. In a memorandum decision and order, the court treated the request for an evidentiary hearing as a motion for reconsideration of the court's grant of the writ of assistance. The court noted that Dean and Betty had failed to present any evidence to create an issue of material fact either at the time of the original hearing or in their request for an evidentiary hearing. Pro Indiviso had a recorded deed which was prima facie evidence of the right to possess. Therefore, the court denied the request. For the same reasons, the court denied the motion for reconsideration. The court also denied the motion to dismiss for lack of subject matter jurisdiction holding that Idaho courts did have jurisdiction to determine right of possession and to issue a writ of assistance. The court denied the motion for a default judgment, ruling that the failure of Pro Indiviso to respond to Dean's earlier motion to dismiss for lack of subject matter jurisdiction did not require entry of a default judgment. Finally, the court denied the renewed motion to dismiss based on fraud. The court ruled that none of the cases cited applied to these facts and that if

Dean and Betty wanted to attack the lien and sale they would have to do so through an administrative hearing or by filing suit against the I.R.S. in federal district court.

On August 7, 1996, Dean and Betty filed an amended notice of appeal to this Court which was dismissed because there was no final judgment in the action. On September 6, 1996, Dean and Betty filed an answer to the original complaint filed in March.

On January 13, 1997, a final pre-trial conference was held. No representative of Pro Indiviso attended the conference. Dean and Betty moved for dismissal under I.R.C.P. 16(i). The court dismissed, without prejudice, all of Pro Indiviso's remaining claims.

In the meantime, Dean and Betty had filed a motion to compel discovery, a motion to vacate trial date, a motion to dismiss, and a motion and affidavit for summary judgment. A hearing was held on January 28, 1997. On February 10, the court issued a memorandum decision and order in which it granted the motion to vacate the trial date and denied all of the other motions because, following the dismissal of Pro Indiviso's remaining claims, there were no claims pending before the court.

Dean and Betty then filed a motion to set aside the court's February 10 order on March 21. Pro Indiviso filed a motion to strike Dean and Betty's motion and requesting sanctions. Dean and Betty then filed a motion to strike Pro Indiviso's motion to strike. The two motions filed by Dean and Betty were filed in the name of Mid-Mile. Pro Indiviso noticed a hearing for April 1, but no one appeared. The court exercised its authority under I.R.C.P. 7(b)(3) to rule on the matter without a hearing

and in a memorandum decision and order, the court treated the motion to set aside as a motion to reconsider. The court ruled the motion untimely because it was filed more than 14 days after the entry of the order. In addition, the court ruled that even if timely, the motion did not contain any facts or law that would cause the court to alter its earlier decision. The court granted Pro Indiviso's motion to strike the two motions submitted in the name of Mid-Mile because Mid-Mile was never served, never entered an appearance, never intervened, and the motions were not signed by any attorney representing Mid-Mile. The court, however, denied Pro Indiviso's request for sanctions.

Another notice of appeal was filed on March 24, 1997 which was conditionally dismissed due to lack of a final judgment. The district court then issued a final judgment on July 22, 1997 and this Court reinstated the appeal.

On appeal, Dean and Betty claim that the district court erred in granting partial summary judgment in favor of Pro Indiviso on its motion for a writ of assistance because (1) Pro Indiviso did not specifically identify in its complaint a statutory basis for bringing its action, (2) the I.R.S. did not follow its own regulations in conducting the sale, and (3) the district court failed to look behind the deed obtained by Pro Indiviso to determine its validity. Dean and Betty also claim the district court should have dismissed the action because Mid-Mile was not a party to the suit. Finally, Dean and Betty argue that Pro Indiviso did not have standing to bring an action for ejectment because it had not previously quieted title in the property.

II.

STANDARD OF REVIEW

> When faced with an appeal from summary judgment, this Court must determine whether the pleadings, depositions, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. The non- moving party is to be given the benefit of all favorable inferences which reasonably might be drawn from the evidence, and all doubts are to be resolved against the moving party. The motion must be denied if the evidence is such that conflicting inferences may be drawn therefrom and if reasonable people might reach different conclusions.

Farmers National Bank v. Shirey, 126 Idaho 63, 67-68, 878 P.2d 762, 766-67 (1994) (citations omitted).

A trial court's grant of a writ of assistance is reviewed for abuse of discretion. *Williams v. Sherman,* 35 Idaho 169, 205 P. 259 (1922); *Federal Land Bank v. Parsons,* 118 Idaho 324, 796 P.2d 533 (Ct.App.1990).

III.

SUMMARY JUDGMENT

Dean and Betty argue that the court erred in considering Pro Indiviso's motion for a writ of assistance because Pro Indiviso had not identified a statutory basis for the ejectment and writ of assistance in the original complaint. Under I.R.C.P. 8(a)(1), Pro Indiviso's complaint only needed to contain "a concise statement of the facts constituting the cause of action and a demand for

relief." *Clark v. Olsen,* 110 Idaho 323, 325, 715 P.2d 993, 995 (1986). The complaint clearly states that the relief sought is ejectment and a writ of assistance, so the only question is whether Pro Indiviso's complaint contained sufficient facts to constitute a cause of action. Since this is an appeal from a partial summary judgment, we must also examine whether there are genuine issues as to any material fact and whether Pro Indiviso is entitled to a judgment as a matter of law.[2]

In an action for ejectment, the plaintiff must allege and prove (1) ownership, (2) possession by the defendants, and (3) refusal of the defendants to surrender possession. *Petty v. Petty,* 70 Idaho 473, 223 P.2d 158 (1950). In this case, Pro Indiviso presented a deed from the I.R.S. granting title to Pro Indiviso. A deed given as the result of a tax sale is prima facie evidence of the facts stated in the deed. 26 U.S.C. § 6339(b)(1). It was uncontroverted that the redemption period had passed and that Pro Indiviso had received a deed which it properly recorded. "If no redemption is made the value of the use and occupation must follow the holder of legal title, namely, the purchaser." *Caldwell v. Thiessen,* 60 Idaho 515,

---

[2] As noted earlier, Pro Indiviso never filed a motion for summary judgment, as such, but only filed a motion for a writ of assistance which the trial court then treated as a motion for summary judgment under I.R.C.P. 56. On appeal, Dean and Betty have only challenged the basis for the grant of partial summary judgment and not the procedure used. Because the issue has not been raised by the parties, we will not address the propriety of the procedure used by the trial court. *The Highlands, Inc. v. Hosac,* 130 Idaho 67, 936 P.2d 1309 (1997); *MacLeod v. Reed,* 126 Idaho 669, 889 P.2d 103 (Ct.App.1995).

519, 92 P.2d 1047, 1048 (1939). Pro Indiviso presented evidence of ownership in the form of a recorded deed. There was no admissible evidence presented to contradict the validity of the deed or the claim that Dean and Betty were in possession of the property adversely to Pro Indiviso's interest. Pro Indiviso, therefore, pleaded and proved a case for ejectment.

"A writ of assistance is a form of process issued by a court of equity to transfer the possession of property, and more specifically lands, the title or right to which it has previously adjudicated. . . . " *Eagle Rock Corp. v. Idamont Hotel Co.*, 60 Idaho 639, 647, 95 P.2d 838, 841 (1939).

> The sole question to be determined on the motion is whether applicant has a right, as against the party in possession to use the writ to obtain possession. In the absence of any claim of an independent paramount title, the only question on such application is whether the decree has or has not been complied with.

Id. at 648, 95 P.2d at 841.

The district court had determined that Pro Indiviso was the owner of the property by the deed received from the I.R.S. It was not contested that Dean and Betty were in possession of the property and that their possession was adverse to Pro Indiviso. The fact that neither Dean nor Betty appeared at the hearing on the motion for a writ of assistance did not prevent the court from reaching a decision on the motion. *Federal Land Bank v. Parsons,* 118 Idaho 324, 796 P.2d 533 (Ct.App.1990). Therefore the district court properly granted the motion for a writ of assistance.

Dean and Betty claim the district court should have invalidated the sale because the I.R.S. did not follow the proper procedures in conducting the sale. This argument is doomed by Dean and Betty's claim that Mid-Mile is the owner of the property. Since Dean and Betty claim not to have any ownership interest in the property, they cannot show any individualized injury. A generalized interest in seeing that the government follows the law or its regulations is insufficient to confer standing absent some particularized harm to the party. *Student Loan Fund of Idaho, Inc. v. Payette County*, 125 Idaho 824, 828, 875 P.2d 236, 240 (Ct.App.1994). Since Dean and Betty have no interest in the property, they cannot claim any individualized harm and so have no standing to challenge the sale on the basis that the I.R.S. did not follow its own regulations.

Dean and Betty also claim the district court should have looked behind Pro Indiviso's deed to determine its validity. This argument likewise fails due to Dean and Betty's claim that they have no ownership interest in the property. Since Dean and Betty claim no ownership interest, they have no standing to challenge the validity of Pro Indiviso's deed.

Next Dean and Betty argue that the district court should have dismissed the action because Mid-Mile, as owner of the property, was not a party to the suit. Had this been a quiet title action, this argument would have merit. As it is, however, the district court only determined the right of Dean and Betty to possess the property as against Pro Indiviso. The district court specifically refused to determine the rights, if any, of Mid-Mile. It is not necessary that all persons with an interest in the subject matter of the suit be joined as parties, but only

those who have an interest in the object of the suit. *Idaho Irrigation Co. v. Dill,* 25 Idaho 711, 716, 139 P. 714, 716 (1914); *see also, State ex rel. Moore v. Howell,* 111 Idaho 963, 729 P.2d 438 (Ct.App.1986). In this case, the rights of Dean and Betty against Pro Indiviso could be determined independent of Mid-Mile's rights. Thus, Mid-Mile was not indispensable and so dismissal was not required.

Finally, Dean and Betty argue that because Pro Indiviso did not bring a quiet title action it had no standing to bring a suit for ejectment. To satisfy the standing requirement, litigants must allege an injury in fact and a substantial likelihood that judicial relief will redress the alleged injury. *Miles v. Idaho Power,* 116 Idaho 635, 778 P.2d 757 (1989). Standing does not require that the party prove their case before the commencement of trial. Here, Pro Indiviso alleged that it had a deed giving Pro Indiviso title to the property in question and that Dean and Betty were in possession of the property adversely to Pro Indiviso's interest. Thus, it alleged an injury in fact, and because successful prosecution of an action for ejectment and a writ of assistance would redress the injury, Pro Indiviso met the requirements of standing. To require every land owner who wants to eject someone from their property to first prove ownership through a quiet title action would be unreasonable and go beyond the requirements of standing.

IV.

ATTORNEY FEES

Pro Indiviso has requested attorney fees under I.A.R. 41 and I.C. § 12-121. An award of attorney fees is appropriate when the appeal is frivolous, unreasonable or without foundation. *Keller v. Rogstad,* 112 Idaho 484, 733 P.2d 705 (1987). Here Dean and Betty have raised the same issues and arguments which were raised before the district court. Most of their motions are incomprehensible and lack any basis in law. The repeated filing of these motions, and the arguments in support on appeal, are frivolous and unreasonable and justify an award of fees under I.C. § 12-121.

V.

CONCLUSION

The district court's grant of the writ of assistance is hereby affirmed. Costs and fees on appeal are awarded to the respondent.

JOHNSON, SILAK, SCHROEDER and WALTERS, JJ., concur.

973 P.2d 142

Alden Dean BOWLES and Betty Joan Bowles,
Plaintiffs-Appellants,

v.

PRO INDIVISO, INC., an Idaho corp., Kent E. Carlson, Carolee Carlson, Alva Harris and Evelyn Harris, Defendants to certain real property described as follows: Beginning at a point North 591.8 feet from the West quarter corner of Section 9, Township 3 North, Range 39, East of the Boise Meridian, Bonneville County, Idaho; and running thence East 367.8 feet; thence North 163.8 feet; thence West 367.8 feet; thence South 163.8 feet, to the point of beginning, the same being part of the Southwest quarter of the North-west quarter of section 9, Township 3 North, Range 39, East of the Boise Meridian. Less road right of way. Street address: 12324 N. 75th E., Idaho Falls, Idaho, Defendants-Respondents.

No. 24243.

Supreme Court of Idaho,
Pocatello, October 1998 Term.

Feb. 3, 1999.

Alden Dean Bowles and Betty J. Bowles, Idaho Falls, appellants pro se.

Alva A. Harris, Shelley, for respondents.

SILAK, Justice.

Alden Dean and Betty Joan Bowles (the Bowles), and representatives of Mid-Mile Holding Trust brought an action against Pro Indiviso, Inc., to quiet title to certain real property. The district court granted judgment on the pleadings in favor of Pro Indiviso, and awarded costs,

fees, and sanctions against the Bowles. The Bowles appeal.

I.

FACTS AND PROCEDURAL BACKGROUND

A. Facts

The Bowles owed money to the United States for taxes not paid in 1990 and 1991. In July 1993, the Bowles purportedly conveyed title to certain real property in Bonneville County to Mid-Mile Holding Trust (Mid-Mile). Later, in March 1994, the Internal Revenue Service (I.R.S.) filed a lien on that real property in order to recover the money. The lien named Mid-Mile as nominee for the Bowles.

A tax sale was held in June, 1995 at which the I.R.S. sold the subject property at public auction. Pro Indiviso, an Idaho corporation, purchased the property and received a certificate of sale. After the period for redemption had passed, Pro Indiviso received a deed from the I.R.S. which it then recorded.

Later, Pro Indiviso filed an action for ejectment which the Bowles opposed. In that separate action, Mid-Mile was not served with the complaint, and so was dismissed from the suit. Partial summary judgment was granted in favor of Pro Indiviso. On appeal to this Court, the decision of the district court was affirmed. *Pro Indiviso, Inc., v. Mid-Mile Holding Trust,* 131 Idaho 741, 963 P.2d 1178 (1998). In pertinent part, this Court held that the Bowles did not have standing to challenge the legitimacy of the tax sale on the basis that the I.R.S. did not follow its own

regulations because they could not show individualized harm. Also, this Court held that the Bowles' lack of standing prevented them from challenging the validity of Pro Indiviso's deed.

Subsequently, the Bowles and representatives of Mid-Mile brought this action to quiet title to the subject real property. The Bowles maintain that they do not own, nor have legal title to the property but that they are merely interested parties. The Bowles have pursued this action pro se; likewise, the representatives of the trust were pro se plaintiffs.

As a result of many diverse motions the district court made several determinations. It prohibited Mark Miller, alleged trustee of Mid-Mile, from representing any natural person or entity in Idaho, including Mid-Mile. Additionally, it dismissed Mid-Mile's complaint without prejudice, to refile after the complaint is signed by an attorney licensed to practice law in Idaho courts. The district court also considered Pro Indiviso's summary judgment motion to be a motion for judgment on the pleadings, which it granted, thereby dismissing the Bowles' amended complaint with prejudice. Similarly, it granted the defendants Carlson's and Harris' motion for judgment on the pleadings, thereby dismissing the Bowles' amended complaint with prejudice as to all remaining defendants. It also granted a motion for Rule 11 sanctions against the Bowles and several motions for attorney fees and costs in favor of the defendants. Finally, the court denied the Bowles' motion for reconsideration and modification of the judgments, and awarded additional attorney fees against the Bowles.

B. Procedural Background

In January 1997, Mid-Mile, Eileen Hancock, as trustee for Mid-Mile, and the Bowles filed a complaint seeking to quiet title to the subject property. In June 1997, pursuant to court order, the Bowles filed an amended complaint against Pro Indiviso, the Carlsons, and the Harrises. The Bowles alleged that in July of 1993, by deed recorded in Bonneville County, Mid-Mile Holding Trust became the owner of the subject property in fee simple. However, despite the order of the district court that a copy of the trust agreement be filed with the district court within ten days, the plaintiffs failed to present any admissible evidence to the district court that supported the existence of Mid-Mile Holding Trust as a lawfully created trust in Idaho. The defendants properly filed answers to the Bowles' complaints. The amended complaint stated two causes of action: quiet title, and deprivation of due process of law.

On July 2, 1997, defendant Pro Indiviso filed a motion for summary judgment and sanctions. On July 7, 1997, the other defendants filed a motion for judgment on the pleadings. On July 25, 1997, the Bowles filed a memorandum opposing the motion for summary judgment and motions seeking attorney fees.

After hearing argument on the pending motions, the district court granted the motion for judgment on the pleadings as to all defendants. In its corresponding Memorandum Decision and Order, dated August 14, 1997, the district court awarded attorney fees against the Bowles in the amount of $450.00. Additionally, the court awarded $1800.00 in attorney fees against Mid-Mile Holding Trust,

and trustees Mark Miller and Eileen Hancock. Costs were also awarded against all plaintiffs. On August 29, 1997, the individual defendants filed a motion for additional attorney fees and costs.

On September 2, 1997, the Bowles filed a motion for reconsideration and for modification of the court's August 25, 1997 judgment issued pursuant to its Memorandum Decision and Order of August 14, 1997. At the September 15, 1997 hearing on the pending motions, the Bowles submitted a "verified judicial notice" objecting to the payment of all attorney fees. The district court issued another Memorandum Decision and Order on September 30, 1997, in which it denied the Bowles' motion for reconsideration and modification, and awarded additional attorney fees against the Bowles in the amount of $1,392.00.

The Bowles timely appealed to this Court. However, neither the trust nor any of the representatives of the trust appealed any order or judgment of the district court. The Bowles do not appeal any specific judgment or order, but instead appeal "all final judgments, adverse orders, rulings, memoranda or determinations entered" by the district court.

II.

ISSUES ON APPEAL

The appellants Bowles presented more than fifteen issues on appeal; yet, the respondent Pro Indiviso maintains that there are no issues on appeal. Due to the number and nature of the issues presented to the Court, they are generally summarized as follows:

1. Whether the district court erred in granting judgment on the pleadings in favor of Pro Indiviso;

2. Whether the district court erred in ordering the Bowles to pay attorney fees, costs, and sanctions; and

3. Whether Pro Indiviso is entitled to attorney fees on appeal.

III.

STANDARD OF REVIEW

A. Judgment On The Pleadings.

The standard of review applicable to a summary judgment also applies to a judgment on the pleadings. *See Trimble v. Engelking*, 130 Idaho 300, 302, 939 P.2d 1379, 1381 (1997). The standard by which this Court reviews a summary judgment is the same as the standard used by the lower court in ruling on a motion for summary judgment. *See State v. Rubbermaid Inc.*, 129 Idaho 353, 355-56, 924 P.2d 615, 617-18 (1996). Upon review, all disputed facts are to be liberally construed in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. *See id.* at 356, 924 P.2d at 618. Summary judgment is appropriate if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c); *Harris v. State, Dep't of Health & Welfare*, 123 Idaho 295, 297, 847 P.2d 1156, 1158 (1992).

B. Attorney Fees, Costs And Sanctions.

An award of attorney fees pursuant to section 12-121 of the Idaho Code is discretionary and is subject to review and vacation only upon a showing of an abuse of discretion. *See Zaleha v. Rosholt, Robertson & Tucker, Chtd.*, 131 Idaho 254, 257, 953 P.2d 1363, 1366 (1998); *Savage Lateral Ditch Water User. Ass'n v. Pulley*, 125 Idaho 237, 250, 869 P.2d 554, 567 (1993).

Also, this Court applies the abuse of discretion standard to review issues of costs under I.R.C.P. 54(d)(1). *See Vaught v. Dairyland Ins. Co.*, 98.6 ISCR 196, 197, 131 Idaho 357, 360, 956 P.2d 674, 677; *Adams v. Krueger*, 124 Idaho 74, 77, 856 P.2d 864, 867 (1993). In addition, in reviewing the award of sanctions pursuant to Rule 11(a)(1) of the Idaho Rules of Civil Procedure, this Court uses an abuse of discretion standard. *See Sun Valley Shopping Ctr. v. Idaho Power*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

IV.

ANALYSIS

A. The District Court Correctly Granted Judgment On The Pleadings In Favor Of Pro Indiviso.

The district court granted judgment on the pleadings in favor of Pro Indiviso, thereby dismissing the Bowles' complaint. That court concluded in its August 14, 1997 memorandum Decision and Order "as a matter of law that both the quiet title claim and the second claim for 'taking of [the Trust's] property without due process of law' cannot be prosecuted by the Bowles, who allege no

interest in the property." Due to the nature of the argument presented by the Bowles, it is difficult to determine upon what grounds the decision of the district court is challenged. Presumably, the Bowles challenge the district court's determination that they do not have standing.

"An inherent duty of any court is to inquire into the underlying interest at stake in a legal proceeding." *Miller v. Martin*, 93 Idaho 924, 926, 478 P.2d 874, 876 (1970). In every lawsuit there must be a justiciable interest cognizable in the courts as a precondition to any party maintaining a lawsuit. *See id.* "Standing is that aspect of justiciability focusing on the party seeking a forum rather than on the issues he wants adjudicated." *Bentel v. County of Bannock*, 104 Idaho 130, 135, 656 P.2d 1383, 1388 (1983) (quoting *Life of the Land v. Land Use Commission of the State of Hawaii*, 63 Haw. 166, 623 P.2d 431, 438 (Haw.1981)). Stated more precisely, "[t]he doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated." *Miles v. Idaho Power Co.*, 116 Idaho 635, 641, 778 P.2d 757, 763 (1989).

In order to fulfill the standing requirement, the plaintiff must " 'allege such a personal stake in the outcome of the controversy' as to warrant *his* invocation of the court's jurisdiction." *Bentel*, 104 Idaho at 135-36, 656 P.2d at 1388-89 (quoting *Life of the Land*, 623 P.2d at 438) (emphasis in original). The party seeking to invoke the court's jurisdiction must allege such a personal stake in the outcome of the controversy as to assure the concrete adversariness which sharpens the presentation upon which the court so depends. *See Miles*, 116 Idaho at 641, 778 P.2d at 763 (quoting *Duke Power Co. v. Carolina Env. Study Group*, 438 U.S. 59, 72, 98 S.Ct. 2620, 2630, 57

L.Ed.2d 595 (1978)). This "personal stake" requirement demands that the plaintiff allege a distinct palpable injury to himself. *See id.* The Bowles did not do so; instead, they alleged that they were "merely interested parties" in the controversy.

Further, to satisfy the requirement of standing, the Bowles must have alleged or demonstrated an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury. *See Miles v. Idaho Power Co.*, 116 Idaho at 641, 778 P.2d at 763. However, the Bowles have not alleged or demonstrated such an injury; nor have they demonstrated a substantial likelihood that the judicial relief requested would prevent or redress the injury. Thus, the district court correctly granted judgment on the pleadings, thereby dismissing the Bowles' complaint due to their lack of standing.

The Bowles also claim that the district court erred by failing to address their second cause of action, "taking of property without due process of law." However, this Court has "repeatedly stated that [it] will not address constitutional questions not necessary to the resolution of the cause." *V-1 Oil Co. v. State Tax Comm'n*, 112 Idaho 508, 510, 733 P.2d 729, 731 (1987). Since the cause can be resolved based on the Bowles' lack of standing, neither the district court nor this Court is required to address the Bowles' second cause of action. Therefore, we affirm the district court's order granting judgment on the pleadings in favor of Pro Indiviso.

B. The District Court Did Not Err In Ordering The Bowles To Pay Attorney Fees, Costs, And Sanctions.

The district court awarded costs, attorney fees, and sanctions against the Bowles in two separate Memorandum Decision and Order decrees. Review of those decrees, in light of the applicable standard of review, demonstrates that the district court did not abuse its discretion. "In reviewing an exercise of discretion, this Court must consider " '(1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason.' " *Zaleha,* 131 Idaho at 257, 953 P.2d at 1366 (quoting *Sun Valley Shopping Ctr. v. Idaho Power Co.,* 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991))."

It is evident from review of the Memorandum Decision and Order decrees that the district court perceived the issue of whether to grant attorney fees, costs, and sanctions as one of discretion, and that the district court acted within the limits of its discretion and consistently with applicable legal standards. Also, the logical and cogent nature of the district court's analysis of the related issues and arguments before it demonstrates that it reached its decision by an exercise of reason. We conclude that the district court did not abuse its discretion. Therefore, we affirm the district court's orders requiring the Bowles to pay attorney fees, costs, and sanctions.

C. This Court Must Decline To Address Several Issues Raised By Bowles.

The Bowles present several issues on appeal that this Court must decline to address. First, the Bowles ask the Court to decide whether the district court erroneously denied their motion for summary judgment. However, an order denying a motion for summary judgment is not a final order and a direct appeal cannot be taken from it. Moreover, an order denying a motion for summary judgment is not reviewable on appeal from a final judgment. *See Watson v. Idaho Falls Consol. Hospitals*, 111 Idaho 44, 46, 720 P.2d 632, 634 (1986); *Evans v. Jensen*, 103 Idaho 937, 941, 655 P.2d 454, 458 (Ct.App.1982). Therefore, the Court will not review the district court's order denying the Bowles' motion for summary judgment.

Second, the Bowles ask this Court to decide whether the deed from the I.R.S. conveyed title to the subject property to Pro Indiviso. In an earlier decision involving the same parties and closely related issues, this Court stated: "[s]ince [the Bowles] claim not to have any ownership interest in the property, they cannot show any individualized injury. . . . Since [the Bowles] have no interest in the property, they . . . have no standing to challenge sale [of the subject property]. . . . Since [the Bowles] claim no ownership interest, they have no standing to challenge the validity of Pro Indiviso's deed." *Pro Indiviso, Inc. v. Mid Mile Holding Trust*, 131 Idaho 741, 746, 963 P.2d 1178, 1183 (1998). Likewise, in this case, the Bowles lack standing to challenge the validity of the deed from the I.R.S. conveying title to Pro Indiviso. Thus, the Court will not

address the merits of the issue whether the deed from the I.R.S. conveyed title to Pro Indiviso.

Third, the Bowles present this Court with the issue "[a]re the attorneys for [the Defendant] part of an elaborate scheme with the I.R.S., that violates both the State Racketeering Act, . . . and the Federal R.I.C.O. Act, and is the Court's participation in that taking of property part of that scheme?" However, the Bowles completely failed to support the issue with argument or authority. It is well settled that "[w]hen issues on appeal are not supported by propositions of law, authority, or argument, they will not be considered." *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). Furthermore, the failure to support allegations of error with argument and authority is deemed a waiver of the issue. *In re Estate of Logan*, 120 Idaho 226, 231, 815 P.2d 35, 40 (Ct.App.1991). Hence, we will not address this issue.

Fourth, The Bowles ask this Court to decide whether a trust must be represented by a licensed attorney in the State of Idaho. The district court dismissed the complaint of the trust without prejudice to refile after being signed by an attorney licensed to practice law in the Idaho courts. However, neither the trust nor any of the representatives of the trust appeal any order or judgment of the district court. Significantly, the Bowles do not claim to represent the trust in any capacity, nor do they directly argue that they may raise the issue because they are beneficiaries of the trust. This issue is properly raised by the representatives of the trust, not the Bowles. Thus, because the Bowles lack standing to properly present this issue, its merits are not addressed.

Finally, the Bowles seem to argue that the district court erred by dismissing the trust because it was a necessary party to the quiet title action. However, this argument fails because the Bowles have no rights or interests that could be violated even if the trust were a necessary party. The district court dismissed the trust without prejudice and never quieted title in any party. Pro Indiviso did not make a claim for affirmative relief praying for title to be quieted in its favor. Therefore, we will not address the issue of whether the trust, if it even existed,[1] was a necessary party to the action.

V.

ATTORNEY FEES ON APPEAL

The respondents have requested attorney fees pursuant to I.C. § 12-121 and I.A.R. 41. An award of attorney fees is appropriate "if the law is well-settled and the appellants have made 'no substantial showing that the district court misapplied the law.' " *Keller v. Rogstad*, 112 Idaho 484, 489, 733 P.2d 705, 710 (1987) (quoting *Davis v. Gage*, 109 Idaho 1029, 1031, 712 P.2d 730, 732 (Ct.App.1985)). In this case the Bowles have presented arguments that are largely incomprehensible, unreasonable, and lacking foundation in law. There has been no showing that the district court misapplied the law. Hence, we conclude that it is proper to award attorney fees in favor of the respondents Pro Indiviso, Kent and Carolee Carlson, and Evelyn Harris. However, Alva Harris is the

---

[1] Despite court order, there was never any evidence submitted supporting the existence of the trust as a legal entity.

attorney of record on appeal for all respondents, including himself. Therefore, to the extent that Alva Harris has represented himself on appeal, an award of attorney fees is inappropriate. *See Swanson & Setzke, Chtd. v. Henning,* 116 Idaho 199, 203, 774 P.2d 909, 913 (Ct.App.1989) (holding that the general rule against fee awards to pro se litigants is applicable to lawyers *pro se*).

The respondents have also requested the imposition of sanctions under Rule 11.1 I.A.R. on appeal. The pertinent part of Rule 11.1 states that, "[t]he signature of a [ ] . . . party constitutes a certificate that . . . to the best of the signer's knowledge, information and belief after reasonable inquiry [the suit] is well grounded in fact and is warranted by existing law . . . and that [the suit] is not interposed for any improper purpose. . . . " I.A.R. 11.1. There is not sufficient indication in the record that appeal was interposed for an improper purpose. Consequently, sanctions will not be imposed on appeal.

VI.

CONCLUSION

For the foregoing reasons, the order of the district court granting judgment on the pleadings is affirmed. In addition, the order of the district court awarding costs, fees, and sanctions against the Bowles is affirmed. Attorney fees are awarded to respondents, except respondent Alva Harris. Costs are awarded to the respondents.

Chief Justice TROUT, Justices SCHROEDER and WALTERS, and Justice Pro Tem JOHNSON, CONCUR.